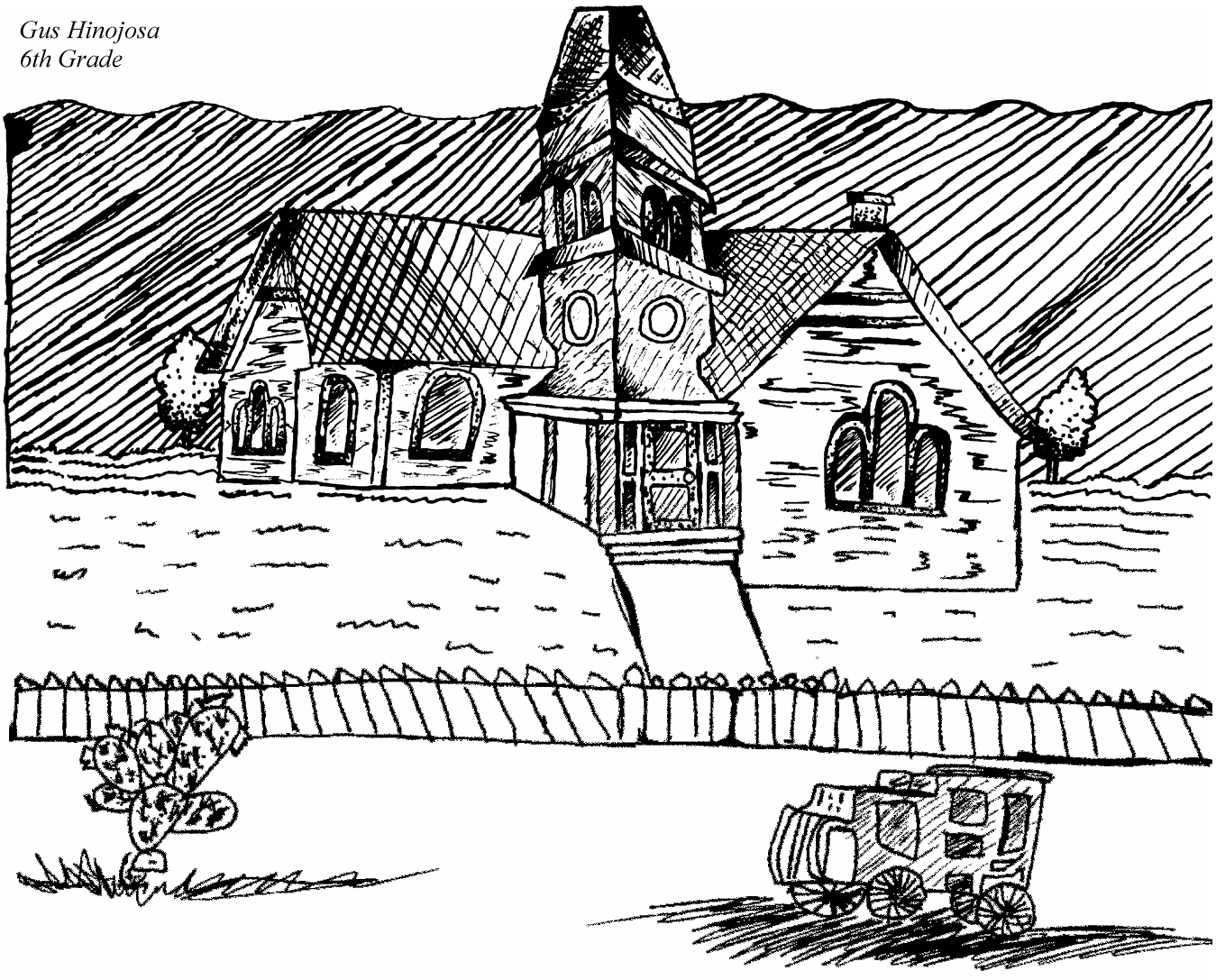
TEXAS REGISTER

Volume 32 Number 33 *August 17, 2007* *Pages 5119 - 5224*

Gus Hinojosa
6th Grade



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

Texas Public Finance Authority

Public Utility Commission of Texas

Texas Residential Construction Commission

Stephen F. Austin State University

Texas A&M University System Board of Regents

Texas Department of Transportation

University of North Texas System

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for August 1, 2007

Appointed to the Texas Residential Construction Commission for a term to expire February 1, 2013, Mickey Redwine of Ben Wheeler (Mr. Redwine is being reappointed).

Appointed to the Texas Residential Construction Commission for a term to expire February 1, 2013, Glenda Mariott of College Station (Ms. Mariott is being reappointed).

Appointed to the Texas Residential Construction Commission for a term to expire February 1, 2013, Gerardo M. Garcia of Corpus Christi (replacing Scott Porter of Kerrville whose term expired).

Rick Perry, Governor

TRD-200703448

♦ ♦ ♦

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0608-GA

Requestor:

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Applicability of the nepotism statutes after a child is born to the marriage of a city employee and the son of a city commissioner (RQ-0608-GA)

Briefs requested by September 4, 2007

RQ-0609-GA

Requestor:

The Honorable Homero Ramirez

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78042

Re: Retroactive application of section 11.168 of the Education Code (RQ-0609-GA)

Briefs requested by September 6, 2007

RQ-0610-GA

Requestor:

Mr. Thomas A. Davis, Jr., Director

Texas Department of Public Safety

Post Office Box 4087

Austin, Texas 78773-0001

Re: Constitutionality of section 521.032, Transportation Code, which permits the Department of Public Safety to issue an enhanced drivers license or personal identification certificate for the purpose of crossing the border between Texas and Mexico (Request No. 0610-GA)

Briefs requested by September 6, 2007

RQ-0611-GA

Requestor:

Mr. Steve Pena, Presiding Officer

Brazos River Authority

Post Office Box 7555

Waco, Texas 76714-7555

Re: Whether the Brazos River Authority may grant a discount off current lease rates for certain persons (Request No. 0611-GA)

Briefs requested by September 7, 2007

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200703436
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 7, 2007

♦ ♦ ♦

Opinions

Opinion No. GA-0559

The Honorable Raymond H. Reese

DeWitt County Attorney

307 North Gonzales Street

Cuero, Texas 77954

Re: Calculation of the "base year" from which to impose a tax freeze adopted by county voters in November 2005 (RQ-0575-GA)

S U M M A R Y

Texas Constitution article VIII, section 1-b(h) authorizes counties to adopt a tax limitation or "freeze" applicable to the residence homesteads of persons who are disabled or sixty-five years of age or older. The property taxes on a qualified residence homestead are limited in subsequent years to the amount of tax imposed in the base year. In DeWitt County, where the voters adopted the tax limitation, the limitation became effective and the base year was established without action by the commissioners court. For DeWitt County taxpayers whose residence homesteads qualified for the tax limitation in 2005, the base year is 2005.

Opinion No. GA-0560

The Honorable Steven M. Hollis

Jasper County Criminal District Attorney

121 North Austin Street, Room 101

Jasper, Texas 75951

Re: Whether the Justice Court Technology Fund may be used to purchase technology equipment and to provide training for constables (RQ-0569-GA)

S U M M A R Y

The Justice Court Technology Fund established under Code of Criminal Procedure article 102.0173 may be used only for technological enhancements for the justice court and continuing education and training for justice court judges and clerks regarding technological enhancements. Whether the purchase of a computer for a constable serves as a technological enhancement for the justice court is a fact question to be determined by the commissioners court in the first instance. The Fund may not, however, be used to finance continuing education and training for a constable.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200703435

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: August 7, 2007

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §233.2

The State Board for Educator Certification (SBEC) adopts on an emergency basis an amendment to §233.2, relating to categories of classroom teaching certificates. The section addresses generalist certificates. The emergency amendment provides legal authority to school districts with approved waivers to extend the assignments of Generalist: Early Childhood-Grade 4 certificate holders to teach in self-contained classrooms for Grades 5 and 6 if assigned prior to the 2007-2008 school year at the discretion of the employing school district.

The amendment is adopted on an emergency basis to take effect immediately pursuant to Texas Government Code, §2001.034, which provides for adoption of an emergency rule if a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice, and authorizes adoption of an emergency rule when necessary to prevent imminent peril to the public welfare.

This emergency action is necessary to cover a period in which there will be no rule in effect, specifically August 1, 2007, the expiration date of the current provisions in 19 TAC §233.2(c)(4), and Fall 2007, the effective date of the permanent amendment to 19 TAC §233.2. Absent the emergency amendment to 19 TAC §233.2, school districts would have no legal authority to continue those assignments during the beginning of the 2007-2008 school year. The SBEC finds that adoption of this rule on an emergency basis is necessary to prevent imminent peril to the public welfare. Failure to adopt this emergency rule provision could jeopardize the livelihood of those educators who require this assignment for employment in Fall 2007 and could jeopardize the ability of local school districts to procure adequate qualified educators for those positions affected by this rule.

The emergency amendment to 19 TAC §233.2(c) adds language that allows standard certificate holders assigned prior to the 2007-2008 school year to remain in these assignments through Fall 2007 or until the effective date of the permanent rule amendment, at the discretion of the employing school districts and removes the reference to previous school years in which the waiver applied. The emergency amendment also removes §233.2(c)(4) since an expiration date for the subsection does not apply. The emergency rule is effective for 120 days and can be extended once for up to 60 days. Also, executive director was changed to the Texas Education Agency staff in §233.2(c)(1) to reflect the assignment of the SBEC's administrative functions and services to the Texas Education Agency in TEC, §21.035.

The amendment is adopted on an emergency basis in accordance with Texas Government Code, §2001.034, and under the Texas Education Code, §21.031(b), which requires the SBEC to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state, and §21.041(b)(2), which requires the SBEC by rule to specify the classes of certificates to be issued.

The emergency amendment implements Texas Education Code, §21.031(b) and §21.041(b)(2).

§233.2. Generalist.

(a) Generalist: Early Childhood-Grade 4. The Generalist: Early Childhood-Grade 4 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Early Childhood-Grade 4 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-4:

(1) Art;

(2) Health;

(3) Music;

(4) Physical Education;

(5) English Language Arts and Reading;

(6) Mathematics;

(7) Science; and

(8) Social Studies.

(b) Generalist: Grades 4-8. The Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Grades 4-8 certificate may teach the following content areas in Grades 4-8:

(1) English Language Arts and Reading;

(2) Mathematics;

(3) Science; and

(4) Social Studies.

(c) The holder of the Generalist: Early Childhood-Grade 4, Bilingual Generalist: Early Childhood-Grade 4, or English as a Second Language Generalist: Early Childhood-Grade 4 certificates may be assigned to teach the content areas specified in subsection (a) of this section in a self-contained classroom in Grades 5 and 6 [~~during the school years 2003-2004, 2004-2005, 2005-2006, and 2006-2007~~] . Standard certificate holders assigned prior to the 2007-2008 school year, in accordance with this subsection, may remain in these assignments, at the discretion of the employing school districts, through fall 2007 or until the effective date of the permanent rule amendment.

(1) The superintendent of a school district or designee must report the assignment to the State Board for Educator Certification in a manner approved by the Texas Education Agency staff [~~executive director~~].

(2) The superintendent or designee must affirm:

(A) the school district's efforts to recruit and employ a fully certified and qualified teacher for the assignment, including the reason for determining as unqualified each appropriately certified applicant. The district must maintain documentation of its recruiting efforts for a period of two years from the date of the making of the record;

(B) that the holder of one of the certificates specified in this subsection will be provided with a trained mentor for the entire period of the assignment to help the person perform effectively in the assignment; and

(C) that written consent has been obtained from the holder of one of the certificates specified in this subsection prior to assignment to self-contained classes in Grades 5 or 6.

(i) A teacher who refuses to consent to assignment under the provisions of this subsection may not be terminated, nonrenewed, or otherwise retaliated against because of the teacher's refusal to consent to the assignment.

(ii) A teacher's refusal to consent to the assignment under the provisions of this subsection shall not impair a school district's right to implement a necessary reduction in force or other personnel action in accordance with school district policy.

(3) Individuals assigned to self-contained classrooms in Grades 5 and 6 under the provisions of this subsection are subject to the provisions of the Texas Education Code, §21.057.

[~~(4) The provisions of this subsection shall expire on August 1, 2007. The provisions of this subsection include 2006-2007 summer school programs and exclude programs beginning in fall 2007.~~]

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2007.

TRD-200703346
Cristina De La Fuente-Valadez
Director, Policy Coordination
State Board for Educator Certification
Effective Date: August 1, 2007
Expiration Date: November 28, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT

SUBCHAPTER D. TREATMENT PLANNING

28 TAC §137.300

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) renews and adopts on an emergency basis an amendment to §137.300, concerning Required Treatment Planning, to change the applicability date for required treatment planning from health care provided on or after May 1, 2007, to health care provided on or after October 1, 2007. This emergency rule is filed in accordance with Government Code §2001.0134(c), and 1 Texas Administrative Code §91.37. Section 137.300 is part of rules adopted relating to disability management. The disability management rules include 28 Texas Administrative Code §§137.10, 137.100, 137.300, and were adopted and published in the January 12, 2007, issue of the *Texas Register* (32 TexReg 163). Section 137.300(g) established an effective date for the implementation of the required treatment planning section of disability management rules.

Since publication of the adopted rules, workers' compensation system participants, including insurance carriers, health care providers, and associations, expressed the need for additional time to establish systems and processes to appropriately address required treatment planning. The system participants expressed a concern that delay in treatment and services may be imminent because neither the health care providers that treat injured employees nor the workers' compensation insurance carriers that process the claims are prepared to initiate treatment planning as required under the newly adopted disability management rules. The system participants need additional time to communicate and develop treatment planning parameters that are mutually acceptable. System participants also indicated additional time is needed to determine approximately how many injured employees will require a treatment plan. Once the rule becomes effective, treatment planning may apply to many injured employees, new and existing. This could result in a significant number of treatment plans that need to be developed by the health care providers and approved by the insurance carriers. In order to avoid any lapse in an injured employee's health care, the system participants must be fully capable of implementing treatment planning.

Pursuant to §8.005(e), House Bill (HB) 7, enacted by the 79th Texas Legislature, Regular Session 2005, the Commissioner of Workers' Compensation may adopt and amend emergency rules and is not required to make the finding described by Government Code §2001.034(a).

Considering the concerns expressed, it is evident that providing workers compensation system participants with additional time to implement treatment planning into their processing systems and business operations will help facilitate a smoother transition of the treatment planning requirements in the disability management rules. It is necessary to adopt these sections on an emergency basis to change the applicability date of §137.300 prior to September 1, 2007. This will allow the carriers and providers sufficient time to establish mutually acceptable parameters for required treatment planning and to prepare their processing systems and business practices.

The amendment is adopted on an emergency basis under Labor Code §§413.011(e), 413.011(g), 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, 402.061, as well as §8.005(e), HB 7 enacted by the 79th Legislature, Regular Session, effective September 1, 2005, and the Administrative Procedures Act, Texas Government Code §2001.034. Section 413.011(e) provides that the Commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and may adopt individual treatment protocols with specific criteria for such adoption. Section

413.011(g) provides that the Commissioner may adopt rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, 401.011(18-a), the definition of "evidence-based medicine," 401.011(22-a), the definition of "health care reasonably required" and 401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the Division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the Commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the Commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the Division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided. Section 413.013 authorizes the Commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the Commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Government Code §2004.034 provides for the adoption of administrative rules on an emergency basis without notice and comment.

§137.300. Required Treatment Planning.

(a) - (f) (No change.)

(g) This section applies to health care provided on or after October [~~May~~] 1, 2007.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2007.

TRD-200703378
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Original Effective Date: April 5, 2007
Expiration Date: October 1, 2007
For further information, please call: (512) 804-4715

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

SUBCHAPTER H. RURAL TECHNOLOGY CENTER GRANT PROGRAM

10 TAC §§257.501 - 257.508

The Office of Rural Community Affairs (Office) proposes new Chapter 257, Subchapter H, §§257.501 - 257.508, concerning the Rural Technology Center Grant Program.

The new sections are being proposed to implement the Rural Technology Center Grant Program to award grants to public institutions of higher education, public high schools, and governmental entities located in rural counties.

Charles S. (Charlie) Stone, Executive Director of the Office, has determined that, for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Stone has determined that, for the first five-year period the proposed new section is in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the proposed new section.

Comments on the proposal may be submitted to Charles S. (Charlie) Stone, Executive Director of the Office, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The new sections are proposed under §487.052 of the Texas Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed new sections.

§257.501. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--On or after September 1, 2007, the governing body of the Office.

(2) Center--A multi-institutional rural technology center.

(3) Executive Committee--The governing body of the Office. On or after September 1, 2007, on the date on which a majority of the Board membership positions created under §487.021, Government Code, are filled any reference in this subchapter to Executive Committee is a reference to the Board.

(4) Executive Director--Executive Director of the Office.

(5) Governmental Entity--A city or county.

(6) Institution of Higher Education--Institution of higher education, as that term is defined by §61.003, Education Code, including each public junior college to the extent possible.

(7) Office--The Office of Rural Community Affairs.

(8) Program--The Rural Technology Center Grant Program.

(9) Rural County--A county in Texas that has a population of not more than 125,000.

§257.502. Purpose and Goal.

(a) The purpose of the Program, subject to available funds, is to award grants to public institutions of higher education, public high schools, and governmental entities located in a rural county for the development and operation of Centers that provide:

(1) community access to technology;

(2) computer literacy programs;

(3) educational programs designed to provide concurrent enrollment credit for high school students taking postsecondary courses in information and emerging technologies;

(4) training for careers in technology-related fields and other highly skilled industries; and

(5) technology related continuing and adult education programs.

(b) The goal of the Program is to increase community access to technology and promote computer literacy. Centers will provide resources to prepare residents, including high school students, for careers in applied technology and other skilled industries.

§257.503. Administration of the Program.

(a) The Office administers the Program.

(b) The Executive Committee delegates to the Executive Director the necessary powers, duties, and functions to administer the Program.

(c) The office may seek, receive, and spend money received through an appropriation, grant, donation, or reimbursement from any public or private source to implement this subchapter.

§257.504. Eligibility Criteria for Grant Applicants.

(a) Public institutions of higher education, public high schools, or governmental entities in a rural county are eligible to apply to the Program for a grant.

(b) In accordance with the General Appropriations Act, funding of applications for the 2008-2009 biennium is limited to public institutions of higher education, public high schools, and governmental entities in Starr and Zapata counties.

(c) If the Office receives additional funding through a grant, donation, or reimbursement from any public or private source other than the General Appropriations Act, the Office may make awards to eligible entities in other rural counties.

(d) The Office may weight scoring for factors including cost per beneficiary, distress, per capita income, unemployment, innovativeness, and matching or leveraged funds.

§257.505. Grant Application Procedures.

(a) Before applications are requested, the Office shall publish one or more notices of grant availability in the *Texas Register*. The notices will include details about the grants, instructions for obtaining a request for proposals, and the names of persons to contact in the Office for further information.

(b) The Office shall maintain a list of persons to be notified of requests for proposals. Any person wanting to be placed on the list should contact: Executive Director, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711.

(c) The Office shall develop and publish a request for proposals, which shall contain details concerning, but not limited to, the following:

(1) the nature and purpose(s) of the grant;

(2) the total amount of funds available for the grant;

(3) the maximum and minimum dollar amounts that will be awarded for individual grantees;

(4) the information and format required for grant applications;

(5) information about the criteria used to judge grant; and

(6) the closing date or dates.

(d) The Office may specify any reasonable requirements for grant applications, including, but not limited to, length, format, authentication, and supporting documentation.

(e) Applications that are incomplete or substantially inconsistent with the requirements of this subchapter may be rejected without further consideration at the discretion of the Office.

(f) Applications received after the closing date will not be considered, unless the closing date is extended by the Office.

(g) Applicants will be given a minimum of 30 calendar days to file applications after a request for proposals is published. Applications must be received by the Office on or before the closing date specified in the request for proposals.

(h) Each application shall be reviewed by the Office for completeness, relevance to the published request for proposals, adherence to Office policies, general quality, technical merit, and budget appropriateness.

(i) The Office review process shall be completed within 30 days after the closing date.

§257.506. Guidelines Relating to Grant Amounts.

(a) The minimum award amount for the Program is $25,000.

(b) The maximum award amount for the Program is $3.5 million.

§257.507. Contract.

(a) A grant recipient shall execute a contract with the Office. The contract shall contain items including, but not limited to: term, budget, reporting requirements, general provisions for Office contracts, and any other specific information that might apply to the award or be needed by the Office.

(b) The Office shall specify reasonable requirements for grants.

(c) Use of grants shall be restricted to the construction, equipment, utilities, and other items as specified by the Office that are necessary for the ongoing maintenance and operation of the Centers.

(d) Except as specifically modified by law or the provisions of the contract, the grant recipient shall comply with 24 C.F.R. Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" (referred to as the "Common Rule") as modified by the rules promulgated by the Office of the Governor under the Uniform Grant and Contract Management Act (TEX. GOV'T. CODE ANN. Chapter 783; referred to as "UGCMS."), in performing this contract.

(e) A contract shall limit to two percent costs for contract administration.

(f) A contract shall contain provisions detailing requirements related to competitive bidding.

(g) The Office shall specify the depreciation period for inventory.

§257.508. Monitoring, Reporting, and Compliance.

(a) Grant recipients shall cooperate with the Office in compliance with the conditions of the grant and monitoring the use of the grants awarded.

(b) Grant recipients shall submit periodic reports to the Office, with content, form and time determined by the Office.

(c) Grant recipients shall maintain all records required by the Office and applicable state laws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2007.

TRD-200703376
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 936-6734

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 82. BARBERS

16 TAC §§82.10, 82.20 - 82.22, 82.29, 82.31, 82.40, 82.50 - 82.54, 82.70, 82.71, 82.80, 82.106, 82.110, 82.114, 82.120

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§82.10, 82.20 - 82.22, 82.29, 82.31, 82.40, 82.50 - 82.54, 82.70, 82.71, 82.80, 82.106, 82.110, 82.114, and 82.120, regarding the regulation of barbering.

These proposed rule changes are necessary to implement changes in law enacted by House Bill 2106, 80th Legislature, and to make certain clean-up changes in the rules for barbers. The provisions of House Bill 2106 became effective on June 15, 2007 and require the Commission of Licensing and Regulation to adopt rules necessary to implement the new legislation by January 1, 2008. These proposed rule changes were recommended by the Advisory Board on Barbering at its meeting on July 30, 2007.

In §82.10 definitions are added for "hair braider," "hair weaver," and "weaving." House Bill 2106 creates two new certificate types in the barber program, the hair braiding specialty certificate of registration and the hair weaving specialty certificate of registration. The new rule definitions are necessary to clarify the scope of practice of these certificate holders.

In §82.20 amendments are made to specify the eligibility requirements for a hair braiding specialty certificate of registration and a hair weaving specialty certificate of registration. The hair weaving certificate requires 300 hours of instruction and a written and practical examination, while the hair braiding certificate requires 35 hours of instruction and no examination. New §1601.258 and §1601.259 of the Occupations Code, as added by House Bill 2106, defer to the Department setting the specific eligibility requirements.

New language in §82.21(c) implements a change in law made by House Bill 2106, to eliminate the minimum passing grade for the barber examination that was previously set in statute at 75 percent. The effect of this statutory change is to defer to the Department to set the passing score for the examination. The proposed rule sets the passing score at 70 for all examinations in the barber program. This passing score is more consistent with that for other types of Department examinations. The wording changes to what is now subsection (f) are to include examinees for a hair weaving certificate in the list of examinees that must bring necessary instruments to a practical examination.

The heading of §82.22 and subsections (a) and (c) are amended to implement a change in law made by House Bill 2106, that specialty shop permits may be obtained for hair weaving and hair braiding shops in addition to manicurist shops. The word "manicurist" is similarly removed from other sections of the rules. Subsection (d) is amended to add hair weaving and hair braiding specialty certificates to the list of license types that are eligible to obtain a booth rental permit. This change is necessary because the Department anticipates that hair weavers and hair braiders may work as independent contractors renting space in a shop. Subsection (e) is deleted to implement a change in law made by House Bill 2106, that new barbershops and specialty shops are no longer required to be inspected by the Department before opening for business.

Section 82.29(b) is amended to implement a change in law made by House Bill 2106 by specifying that relocated barbershops and specialty shops are no longer required to be inspected by the Department before opening for business. Relocated barber schools must still be inspected prior to opening. Additionally, in subsection (c) a clean-up change is made to clarify that the list of events that constitute a change of ownership is not an exhaustive list.

In §82.31 hair braiding specialty certificates, hair weaving specialty certificates, hair weaving specialty shop permits, and hair braiding specialty shop permits are added to the list of license types with a two-year term.

In the General Appropriations Act, the 80th Legislature appropriated money to the Department from the Barber School Tuition Protection Account for the 2008-09 biennium. In response, the Department proposes to update the rules related to claims against the account. In §82.40(f) the dollar limit for each claim is lowered to $1,000. This amount is set in view of the $5,000 annual amount that the Legislature has appropriated for payment of claims. A limit of $2,500 is placed on the total of claims that may be paid against one school. This limit is intended to avoid having the entire amount of appropriated funds being exhausted by claims against one closed school. Subsection (g) is added to list the requisites for payment of a refund to a student. Subsection (h) specifies that claims will be paid on a pro rata basis if all claims cannot be satisfied. Subsection (i) requires that the Department provide notice of a claim to the affected school and gives the school 20 days from the date of the notice to dispute the claim. Subsection (j) identifies the consequences of a payment from the account, including that the closed school must repay the account and that the school is subject to administrative sanctions and penalties. New language also provides that the Department is subrogated to the rights of a student against a school to the extent of the amount paid to the student from the account. To be eligible for payment from the account, the student must assign to the Department his or her rights against the school to the extent of the amount paid to the student from the account. These provisions will enable the Department to seek reimbursement to the account from the closed school, as part of the Department's statutory duty to administer claims made against the account under §1601.3571, Occupations Code.

Sections 82.50 and 82.51 are amended to recognize that initial inspections are now required only of barber schools and not shops.

Section 82.52(a) is amended to implement a change in law made by House Bill 2106 to increase the frequency of periodic inspections of barber schools to twice per year. A clean-up change is made to subsection (d) to remove a reference to "certain" violations because the rules do not specify certain violations that may result in administrative penalties or sanctions. The Department's Penalty Matrix, which is part of the Enforcement Plan, identifies the range of sanctions and penalties for various violations.

The effect of the wording changes in §82.53 is to remove barber schools from Tiers 1 and 2 of the risk-based inspection schedule. This change is necessary in light of the increased frequency of periodic inspections for schools. Additional relevant factors are added that would place a barber school in Tier 3. Conforming changes are made to subsections (f) and (g). As in §82.52(d) the word "certain" is removed in subsection (e) in reference to administrative penalties and sanctions for violations.

Section 82.54(a) is amended to add a deadline by which an establishment owner shall complete all corrective modifications and provide written verification of the corrective modifications to the Department. The deadline is 10 calendar days after receiving the Department's list of required corrective modifications. As in previous sections, the word "certain" is removed with respect to violations that may lead to administrative penalties and sanctions. Subsection (b) is amended to add that failure to complete corrective modifications timely or to provide written verification

to the Department timely may result in administrative penalties or sanctions.

Section 82.70 is amended to delete the word "manicurist" in reference to specialty shops. In subsection (b) hair weavers and hair braiders are added to the requirement that license holders comply with health and safety standards. In subsection (f) hair weavers and hair braiders are added to the requirement to obtain a booth rental permit if the license holder leases space on the premises of a barbershop or specialty shop as an independent contractor.

Section 82.71 is amended to add specific requirements for hair weaving specialty shops and hair braiding specialty shops. The primary difference is that hair braiding specialty shops are not required to provide shampoo bowls or dryers because hair braiding practice does not include shampooing.

Section 82.80 is amended to add application and renewal fees for hair weaving and hair braiding specialty certificates. Both the application fee and the renewal fee are $53, including a $10 newsletter fee. The rule is also amended to make clean-up changes regarding the fees for a barber school. For clarity, the permit fee of $500 is separated from the inspection fee of $500. The overall fees paid by a school will not change as a result of this rule change.

Section 82.106 is amended to implement a change in law enacted by House Bill 2106. Under Texas Occupations Code, Section 1603.352, as amended by House Bill 2106, the requirement to sterilize instruments used in nail services applies to metal instruments.

In §82.110 the heading is amended to add hair braiding services to the health and safety standards. Hair weavers and hair braiders are specifically listed in the requirement for licensees to wash their hands before performing services on a client.

Section 82.114(f) is amended to make a clean-up change to clarify that preparation of food or beverages on licensed premises for sale is prohibited, but preparation of food or beverages not for sale is permitted. For example, a barber establishment may offer a cup of coffee to a customer without charge. The language of the current rule, strictly interpreted, could be read to prohibit a barber establishment from preparing a cup of coffee for a customer. This is not the intent of the rule and was never the Department's interpretation. The intent of the rule is to prohibit, due to health concerns, the operation of a food or drink establishment on the same premises as a barber establishment. The Department's enforcement of the rule has been consistent with that interpretation. However, the Department proposes this change to avoid any confusion as to what is permitted.

Section 82.120 is amended to add the 35-hour curriculum for the hair braiding specialty certificate and the 300-hour curriculum for the hair weaving specialty certificate. The rule specifies the topics that must be covered and the number of hours that must be devoted to each topic.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no significant changes to costs or revenues of the state and no changes to costs or revenues of local government as a result of enforcing or administering the amendments. Costs and increases in revenue associated with issuance of the new certificates, specialty shop permits, and student permits are not expected to be significant.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be as follows: more clear and detailed procedures for payment of tuition refund claims to barber students when a school closes; a fixed time frame for establishment owners to make corrective modifications following an inspection; a more specific requirement that hair weavers and braiders must wash their hands before working on a client; and clarification that establishments may offer food and beverages, such as coffee, without charge to customers.

Mr. Kuntz also has determined that there may be some increased costs to closed barber schools by requiring that the schools must repay claims that are paid from the Barber School Tuition Protection Account. Schools affected may include small or micro-businesses. The maximum amount of each claim is $1,000, and the maximum amount of all claims paid for one school is $2,500. Repayments to the account include interest of 8% per year. Additionally, establishments, including small or micro-businesses, generally will have a ten-day deadline to make corrective modifications following a Department inspection. The cost of making these modifications within the specified time frame will vary depending on the nature of the violation. There are no other anticipated costs to persons required to comply with the rules as proposed. There are no other anticipated costs to small or micro-businesses.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, Chapters 51, 1601, and 1603, which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department. In particular, many of these rule changes are proposed to implement the provisions of House Bill 2106, 80th Legislature.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Texas Occupations Code, Chapters 1601 and 1603.

(2) Barber Establishment--A barbershop, manicurist specialty shop, or school, licensed under the Act.

(3) Barber Refresher Course--A department-approved course to renew or update the skills of a currently licensed barber, or a barber who has not practiced for a period of time, or to prepare a formerly licensed barber for the examination.

(4) Barber School--When used in this chapter includes both barber schools and barber colleges.

(5) Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture.

(6) Board--The Advisory Board on Barbering.

(7) Booth Rental Permit--A permit that allows a barber or manicurist to lease space on the premises of a barbershop or manicurist

specialty shop to engage in the practice of barbering as an independent contractor.

(8) Commission--The Texas Commission of Licensing and Regulation.

(9) Department--The Texas Department of Licensing and Regulation.

(10) Hair braider--A person who holds a Hair Braiding Specialty Certificate of Registration from the department to braid hair. Such practice shall not include shampooing, conditioning, drying, styling, or applying any chemicals, including color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl or alter the structure of hair. A hair braider may trim hair extensions only as applicable to the braiding process. Commercial hair may be attached only by braiding and without the use of chemicals or adhesives.

(11) [~~(10)~~] Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(12) Hair weaver--A person who holds a Hair Weaving Specialty Certificate of Registration from the department to perform the services of a hair braider as defined in this section and, additionally, attach hair by any weaving method. Such practice may include shampooing, conditioning, and drying performed in connection with a hair weaving service. Such practice may not include styling, cutting, or trimming hair except to the extent such activity is incidental to a hair weaving service. Such practice shall not include the application of color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl, or alter the structure of hair.

(13) [~~(11)~~] License--A license, permit, certificate, or registration issued under the authority of the Act.

(14) [~~(12)~~] License by reciprocity--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(15) [~~(13)~~] Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(16) [~~(14)~~] Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(17) [~~(15)~~] Registered Examination Proctor--An individual authorized by the Department to evaluate or grade a practical examination for the department for a certificate or license issued under Texas Occupations Code, Chapter 1601.

(18) [~~(16)~~] Sideburn--Part of a hair cut or style that is a continuation of the natural scalp hair growth, does not extend below the line of demarcation, and is not connected to any other bearded area on the face.

(19) Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

§82.20. License Requirements--Individuals.

(a) To be eligible for a Class A Barber Certificate, a Teacher's Certificate, Barber Technician License, Manicurist License, or Hair Weaving Specialty Certificate of Registration [~~or Student Permit~~], an applicant must:

(1) submit the application on a Department approved form;

(2) pass the applicable examination;

(3) pay the fee required under §82.80; and

(4) meet other applicable requirements of the Act and this section.

(b) To be eligible for a Hair Braiding Specialty Certificate of Registration or Student Permit, an applicant must:

(1) submit the application on a Department approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act and this section.

(c) [~~(b)~~] Class A Barber Certificate--To be eligible for a Class A barber certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.253. [~~;~~]

(d) [~~(c)~~] Teacher's Certificate--To be eligible for a teacher's certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.254. [~~;~~]

(e) [~~(d)~~] Barber Technician License--To be eligible for a Barber Technician License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.256. [~~;~~]

(f) [~~(e)~~] Manicurist License--To be eligible for a Manicurist license, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.257. [~~;~~]

(g) Hair Weaving Specialty Certificate of Registration--To be eligible for a Hair Weaving Specialty Certificate of Registration, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.258. Additionally, an applicant must complete 300 hours of instruction in a barber school and pass a written and practical examination.

(h) Hair Braiding Specialty Certificate of Registration--To be eligible for a Hair Braiding Specialty Certificate of Registration, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.259. Additionally, an applicant must complete 35 hours of instruction in a barber school. No examination is required.

(i) [~~(f)~~] Student Permit--To be eligible for a Student permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.260. [~~;~~]

(j) [~~(g)~~] Registered Examination Proctor--To be eligible for an Examination Proctor registration, an applicant must:

(1) have held an active teacher's certificate for at least two of the five years preceding the application;

(2) hold an active teacher's certificate;

(3) obtain a certificate of completion from a department approved training course;

(4) submit a completed application for initial registration on a form approved by the department; and

(5) pay the applicable fee under §82.80.

(k) [~~(h)~~] A license application is valid for one year from the date it is filed with the department.

§82.21. License Requirements--Examinations.

(a) To be eligible for a department examination, an applicant must:

(1) submit a completed license application on a department-approved form;

(2) pay the applicable license application fee under §82.80; and

(3) have completed the number of curriculum hours required by this chapter and the Act.

(b) For a Class A barber certificate, a student is eligible to take the written examination when the department receives proof of completion of 1,000 curriculum hours, as specified by Texas Occupations Code, §1603.255, relating to early examination.

(c) All department examinations consist of a written and practical part. A passing grade of 70 on each part is needed to satisfy the examination requirement.

(d) [~~(c)~~] Examinees must pass the written examination before being eligible to take the practical examination.

(e) [~~(d)~~] When appearing for an examination for a Class A barber certificate or a teacher's certificate, the examinee shall bring the instruments necessary to give a practical demonstration of barbering services.

(f) [~~(e)~~] An examinee for a manicurist , hair weaving, or barber technician license or certificate shall bring to the examination any instruments necessary for a practical demonstration of the services distinctive to his or her specialty.

(g) [~~(f)~~] The examinee shall provide a model, of 16 years of age or older, on whom to demonstrate the practical work. The department may require parental approval for models under 18 years of age.

(h) [~~(g)~~] To be admitted to an examination, the examinee must present a current, valid government-issued photo identification, which includes the applicant's full name and date of birth.

(i) [~~(h)~~] Examinees are required to wear a smock or professional attire for the practical examination.

(j) [~~(i)~~] The department will notify an examinee if the examinee fails either the written or practical examination.

(k) [~~(j)~~] Any student or applicant having had a name change during his or her enrollment at any department licensed barber school must notify the department in writing prior to the date on which the student or applicant is scheduled to take any examination, written or practical.

§82.22. Permit Requirements--Barbershops, [~~Manicurist~~] Specialty Shops, and Booth Rental.

(a) To be eligible for a Barbershop or [~~Manicurist~~] Specialty Shop Permit, or a Booth Rental Permit, an applicant must:

(1) submit the application on a department approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act and this chapter.

(b) Barbershop Permit--To be eligible for a barbershop permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.303.

(c) [~~Manicurist~~] Specialty Shop Permit--To be eligible for a [~~Manicurist~~] Specialty Shop Permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.305. The categories of Specialty Shop Permits issued by the department are: manicurist, hair weaving, and hair braiding.

(d) Booth Rental Permit--To be eligible for a booth rental permit, an applicant must hold a valid Department-issued Class A barber certificate, [~~or~~] manicurist license, hair weaving specialty certificate of registration, or hair braiding specialty certificate of registration and meet the requirements of this section.

[~~(e) A barbershop or manicurist specialty shop must be inspected and approved by the Department prior to the operation of the shop. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.~~]

§82.29. Establishment Relocation, Change of Ownership, Owner Death or Incompetency.

(a) Under the Act, a license is not transferable.

(b) If a barber [~~an~~] establishment relocates, the licensee must apply for a new barber establishment license and verify that the new establishment meets the requirements of the Act and this chapter. Additionally, a relocated school must be inspected prior to operation under the Act.

(c) If an establishment changes ownership, the new owner must apply for a license within 30 days after the change of ownership. Additionally, a school must be inspected but may continue to operate prior to inspection. A change of ownership includes the following [~~is defined as~~]:

(1) For a sole proprietorship, the licensee no longer owns and/or operates the establishment.

(2) For a partnership, the partnership is dissolved.

(3) For a corporation, the corporation is sold to another person or entity. A change of ownership does not include corporate officer or stockholder restructuring.

(4) The death or legal incompetency of the owner.

§82.31. Licenses--License Terms.

(a) The following licenses issued under this chapter shall have a term of two years from the date of issuance:

(1) Class A Barber Certificate;

(2) Teacher's Certificate;

(3) Barber Technician License;

(4) Manicurist License;

(5) Hair Weaving Specialty Certificate of Registration;

(6) Hair Braiding Specialty Certificate of Registration;

(7) [~~(5)~~] Barbershop Permit;

(8) [~~(6)~~] Manicurist Specialty Shop Permit;

(9) Hair Weaving Specialty Shop Permit;

(10) Hair Braiding Specialty Shop Permit;

(11) [~~(7)~~] Booth Rental Permit; and

(12) [~~(8)~~] Student Permit.

(b) The following licenses issued under this chapter shall have a term of one year from the date of issuance:

(1) Barber School Permit; and

(2) Examination Proctor Registration.

§82.40. Barber School Tuition Protection Account.

(a) Pursuant to §1601.3571 of the Act, the Barber School Tuition Protection Account is created to refund unused tuition if a barber school ceases operation before its course of instruction is complete.

(b) In each year in which the balance of the Barber School Tuition Protection Account is less than $25,000 the Department will determine a fee that shall be paid by all permitted barber schools to the account.

(c) The necessity for assessing the fee will be determined by the Department when it conducts its annual account balance review prior to December 31st. The fee that is assessed by the Department shall be in effect for a period of 12 months.

(d) The fee shall be paid by each permitted barber school, upon annual renewal of the license during the 12-month period and shall be paid in addition to the renewal fee. The renewal notice sent by the Department will reflect the fee due to the account.

(e) In addition to any other fees, all new schools applying for a barber school permit shall pay the prescribed fee to the account before a permit will be issued.

(f) The total payment of a claim from the Barber School Tuition Protection Account may not exceed $1,000. The total amount of claims paid against a single closed school may not exceed $2,500 [~~$3,000~~].

(g) The executive director may authorize payment to a student from the Barber School Tuition Protection Account, if:

(1) the student makes a claim for payment on a form approved by the executive director;

(2) a closed barber school has failed to refund unused tuition to the student within 30 days after the date the student became eligible for the refund;

(3) the executive director determines after investigation that the student is owed the refund; and

(4) the student assigns to the department all rights of the student against the barber school to the extent of the amount paid to the student from the account.

(h) The department shall pay claims on a pro rata basis from appropriated money available in the account if:

(1) the account contains insufficient assets to pay all claims;

(2) insufficient money has been appropriated to the department from the account to pay all claims; or

(3) the total amount of claims against a single closed school exceeds the amount specified in Subsection (f).

(i) The department shall notify a closed barber school of any claim made against the closed school under this section. Before the executive director may authorize any payment from the account, the school shall have 20 days from the date of notice of the claim to dispute the claim and present evidence to the executive director in opposition to the claim.

(j) If payment is made from the Barber School Tuition Protection Account on a claim against a closed barber school:

(1) the school shall reimburse the account immediately or agree in writing to reimburse the account, on a schedule to be determined by the executive director;

(2) the school shall immediately pay the student any additional amount due to the student under the Act or agree in writing to pay the student on a schedule to be determined by the executive director;

(3) payments made by a school to the account or to a student under this subsection include interest accruing at the rate of eight percent a year beginning on the date the executive director pays the claim;

(4) the department shall be subrogated to all rights of the student against the barber school to the extent of the amount paid to the student; and

(5) the department may assess administrative penalties or sanctions against the school and may deny an application for a license, certificate, or permit or an application for renewal of a license, certificate, or permit filed by the holder of the barber school permit.

§82.50. Inspections--General.

(a) Barber establishments shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter, particularly those requirements relating to public safety, licensing, and sanitation. In addition, the department will make information available to barber establishment owners and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the barber establishments. Except for initial inspections of barber schools, the department may conduct inspections under the Act and this chapter without advance notice.

(c) The department inspector will contact the barber establishment owner, manager, or their representative upon arrival at the barber establishment, and before proceeding with the inspection.

(d) The barber establishment owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.

§82.51. Initial Inspections--Inspection of Barber Schools [~~Establishments~~] Before Operation.

(a) Any new or relocated barber school [~~establishment~~] must be inspected and approved by the department before it may operate. Additionally, a barber school that has changed ownership must be inspected and approved by the department, but may continue to operate prior to inspection.

(b) The barber school [~~establishment~~] owner shall request an initial inspection from the department and pay the permit fee required by §82.80. In order for the department to schedule the initial inspection in a timely manner, the initial inspection request and fee should be submitted to the department no later than forty five (45) calendar days prior to the opening date of the school [~~establishment~~].

(c) Upon receipt of the owner's request and the permit fee, the department shall schedule the initial inspection date and notify the owner.

(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the barber school [~~establishment~~] meets or does not meet the minimum requirements of the Act and this chapter.

(e) For barber schools [~~establishments~~] that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed by the owner.

(f) A barber school [~~establishment~~] that does not meet the minimum requirements on initial inspection must be reinspected. The barber school [~~establishment~~] owner must submit the request for reinspec-

tion along with the fee required by §82.80, before the department will perform the reinspection.

§82.52. Periodic Inspections.

(a) Each barbershop and [~~manicurist~~] specialty shop shall be inspected at least once every two years. Each barber school shall be inspected at least twice per year.

(b) The barbershop or [~~manicurist~~] specialty shop owner, manager, or their representative must, upon request, make available to the inspector the list required by §82.71(c) of all individuals who work in the shop.

(c) Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective modifications required to address the violations, in accordance with §82.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for [~~certain~~] violations, in accordance with §82.90.

(e) Based on the results of the periodic inspection, a barber establishment may be moved to a risk-based schedule of inspections. The department will notify the owner of a barber establishment, in writing, if the establishment becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

§82.53. Risk-Based Inspections.

(a) Risk-based inspections are those required in addition to periodic inspections required under §82.52, for barber establishments determined by the department to be a greater risk to public health or safety. To determine which establishments will be subject to risk-based inspections, the department has established criteria and frequencies for inspections. The owner of the barber establishment shall pay the fee required under §82.80 for each risk-based inspection, in a manner established by the department.

(b) Barber establishments subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:
Figure: 16 TAC §82.53(b)

(c) The barbershop or [~~manicurist~~] specialty shop owner, manager, or their representative must, upon request, make available to the inspector, the list required by §82.71(c) of all individuals who work in the shop.

(d) Upon completion of the inspection, the owner of the barber establishment shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(e) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner of the barber establishment. The report will also indicate the corrective modifications required to address the violations, in accordance with §82.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for [~~certain~~] violations, in accordance with §82.90.

(f) Barber establishments [~~Barbershops and manicurist specialty shops~~] on a risk-based inspection schedule that have no significant violations [~~of sanitation or licensing requirements~~] in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the establishment [~~shop~~], in writing, if there is a change in the establishment's [~~shop's~~] risk-based schedule or if the establishment [~~shop~~] is returned to a periodic inspection schedule.

[~~(g) Barber schools subject to the Tier 2 or Tier 3 schedule, that have no violations of sanitation or licensing requirements in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule. The department will notify the owner of the barber school, in writing, if there is a change in the school's risk-based schedule.~~]

§82.54. Corrective Modifications Following Inspection.

(a) When corrective modifications to achieve compliance are required [~~, the department~~]:

(1) the department shall provide the owner a list of required corrective modification(s) ; [~~and a deadline for completing modifications; and~~]

(2) within 10 calendar days after receiving the list of required corrective modifications, the owner shall complete all corrective modifications and provide written verification of the corrective modifications to the department; and

(3) the department may grant an extension of time, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) When corrective modifications to achieve compliance involve violations of [~~certain~~] sanitation rules or violations relating to unlicensed practice, those violations may be referred to the department's enforcement division for further action. The barber establishment will be contacted by the department to arrange final resolution of these violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for [~~certain~~] violations or for failure to complete corrective modifications timely or provide written verification to the department timely, in accordance with §82.90.

§82.70. Responsibilities of Individuals.

(a) Only a permitted barber school, barbershop, or [~~manicurist~~] specialty shop or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(b) License holders, including Class A barbers, teachers, barber technicians, hair weavers, hair braiders, and manicurists are responsible for compliance with the health and safety standards of this chapter.

(c) Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and does not include lingerie or see-through fabric.

(d) Licensees shall notify the department in writing of any name change within thirty days of the change.

(e) Licensees shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(f) Barbers, [~~or~~] manicurists, hair weavers, or hair braiders who lease space on the premises of a barbershop or [~~manicurist~~] specialty shop to engage in the practice of barbering as an independent contractor must obtain a booth rental permit.

§82.71. Responsibilities of Barbershops and [~~Manicurist~~] Specialty Shops.

(a) The owner of a barbershop or [~~manicurist~~] specialty shop and the shop manager in whose name the shop permit is jointly issued, if different from the owner, shall both be responsible individually and jointly for ensuring that all persons who work in a shop are properly licensed at all times. Individuals who do not hold a current license and /or permit required by the department shall not be allowed to engage in barbering. Shop owners and shop managers commit an offense in violation of department rules if an individual with an expired license or permit or no license or no permit engages in barbering in a shop.

(b) Shop owners and/or shop managers shall verify that all employees and independent contractors have current licenses and permits, as applicable.

(c) The shop owner and/or shop manager shall maintain a current list of all individuals who work in a shop at the time of inspection including employees and independent contractors who engage in barbering. The list is to be made available to department inspectors upon demand. The list shall contain at least the following information:

(1) name of each individual working in the shop;

(2) the file number (license number) for each individual;

(3) the booth rental permit number for each independent contractor (booth renter);

(4) whether the individual is an employee or an independent contractor who engages in barbering;

(5) the type of license or permit held by the individual (e.g., barber, manicurist);

(6) the expiration date of the individual's license and/or permit; and

(7) the expiration date of the independent contractor's booth rental permit.

(d) Each barbershop may display a barber pole. This pole shall be the traditional red, white with the optional blue.

(e) In addition, barbershops shall display on the exterior of the building or premises a sign containing the words "Barber Shop" or "Barber Salon" or any phrase containing the word "Barber".

(f) Food or drink must be disposed of in a closed container and the shop shall be separated by a solid wall and have a separate entrance if located in the same building with a restaurant or food preparation area. This rule will not apply to a licensed barbershop or specialty shop in a department store when the sale of food and drink is not immediately adjacent to the shop.

(g) A shop shall provide for the use of individuals who work in the shop at least one sink, wash basin, or hand sanitizer for every three chairs or stations.

(h) Only a permitted barber school, barbershop, or [~~manicurist~~] specialty shop or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(i) A shop is responsible for compliance with the health and safety standards of this chapter.

(j) Alterations to the shop's floor plan must be in compliance with the requirements of the Act and this chapter.

(k) A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

(l) Shops may establish rules of operation and conduct, which may include rules relating to clothing, that do not conflict with this chapter.

(m) Shops shall notify the department in writing of any name change of the shop within thirty days of the change.

(n) Shops shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(o) Hair weaving specialty shops shall provide the following equipment for each licensee present and providing services:

(1) one work station;

(2) one styling chair;

(3) a sufficient amount of shampoo bowls for licensees providing hair weaving services; and

(4) one chair dryer/handheld dryer for each three licensees providing hair weaving services.

(p) Hair braiding specialty shops shall provide the following equipment for each licensee present and providing services:

(1) one work station; and

(2) one styling chair.

§82.80. Fees.

(a) Application Fees:

(1) Class A Registered Barber License--$90 (includes $10 newsletter fee)

(2) Barber Teacher Certificate--$70

(3) Barber Technician License--$40 (includes $10 newsletter fee)

(4) Manicurist License--$40 (includes $10 newsletter fee)

(5) Student Permit--$35 (includes $10 law and rules book fee)

(6) Hair Weaving Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(7) Hair Braiding Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(8) [~~(6)~~] Registered Examination Proctor--$25

(9) [~~(7)~~] Barbershop Permit--$60

(10) [~~(8)~~] [~~Manicurist~~] Specialty Shop Permit--$50

(11) [~~(9)~~] Booth Rental Permit--$50

(12) [~~(10)~~] School Original Permit--$500 [~~Inspection (Permit) $1,000~~]

(b) Renewal Fees:

(1) Class A Registered Barber License--$90 (includes $10 newsletter fee)

(2) Barber Teacher Certificate--$70

(3) Barber Technician License--$90 for licenses expiring on or before May 31, 2006; $40 for licenses expiring on or after June 1, 2006 (includes $10 newsletter fee)

(4) Manicurist License--$40 (includes $10 newsletter fee)

(5) Student Permit--No charge

(6) Hair Weaving Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(7) Hair Braiding Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(8) [~~(6)~~] Registered Examination Proctor--$25

(9) [~~(7)~~] Barbershop Permit--$60

(10) [~~(8)~~] [~~Manicurist~~] Specialty Shop Permit--$50

(11) [~~(9)~~] Booth Rental Permit--$50

(12) [~~(10)~~] School Permit--$300

(c) License by Reciprocity or Endorsement--$100

(d) Issuance of a revised or duplicate license, certificate or permit--$25

(e) Verification of license, permit or certificate to other states--$25

(f) Law and Rules Book Fee--$10

(g) Registered Examination Proctor Department Training Course--$50

(h) Late renewals fees for licenses, certificates and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(i) Inspection Fees (for each occurrence):

(1) Inspection or Reinspection of school prior to operation--$500 [~~Reinspection of shop prior to operation--$35~~]

[~~(2) Reinspection of school prior to operation--$500~~]

(2) [~~(3)~~] Risk-based Inspection Fees for schools and shops--$150

§82.106. Health and Safety Standards--Manicure and Pedicure Services.

(a) Barbers and barber manicurists shall clean their hands with soap and water or a hand sanitizer prior to performing any services.

(b) Barbers and barber manicurists shall clean the areas of the client's body on which the service is to be administered.

(c) All metal [~~non-porous~~] manicure and pedicure tools shall be properly cleaned, disinfected and sterilized prior to each service, in accordance with this chapter, regardless of the tool's multiuse for only a single client or for multiple clients.

(d) After each client, the following implements shall be cleaned, disinfected, and sterilized in accordance with the rule: metal pusher and files, cuticle nipper and scissors, tweezers, finger and toe nail clippers and electric drill bits.

(e) The following implements are single-use items and shall be discarded after use: orangewood sticks, cotton balls, nail wipes and disposable towels.

(f) Buffer blocks, porous nail files, pedicure files, callus rasps, natural pumice and foot brush, arbor, sanding bands, sleeves, heel and toe pumice, exfoliating block (rough surfaced or absorbent materials) shall be cleaned by manually brushing or other adequate methods to remove all visible debris after each use, and then sprayed with Isopropyl or ethyl alcohol, an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, or a high-level disinfection chlorine bleach solution in accordance with this chapter. If a buffer block or porous nail file is exposed to broken skin (skin that is not intact) or unhealthy skin or nails, it must be discarded immediately after use in a trash receptacle.

(g) The following materials that are used during a manicure and pedicure shall be replaced with new or clean articles for each client: terry cloth towels, finger bowls and spatulas that contact skin or skin products from multi-use containers.

§82.110. Health and Safety Standards--Hair Weaving and Hair Braiding Services.

(a) Hair weavers and hair braiders [~~Barbers~~] shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) Hair extensions, tracks, needles, and thread shall be stored in a bag or covered container until ready to use. No unrelated items shall be stored in the same bag or container.

(d) Needles shall be sprayed with a disinfectant before use.

§82.114. Health and Safety Standards--Establishments.

(a) Establishments shall keep the floors, walls, ceilings, shelves, furniture, furnishings, and fixtures clean and in good repair. Any cracks, holes, or other similar disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(b) All floors in areas where services under the Act are performed, including restrooms and areas where chemicals are mixed or where water may splash, must be of a material which is not porous or absorbent and is easily washable, except that anti-slip applications or plastic floor coverings may be used for safety reasons. Carpet is permitted in all other areas.

(c) Plumbing fixtures, including toilets and wash basins, shall be kept clean. They must be free from cracks and similar disrepair that cannot be readily accessible for cleaning.

(d) Each establishment must have suitable plumbing that provides an adequate and readily available supply of hot and cold running water at all times and that is connected for drainage of sewage and potable water within the areas where work is performed and supplies dispensed.

(e) Every establishment shall provide at least one restroom located on or near the premises of the establishment. For public safety, chemical supplies shall not be stored in the restroom.

(f) Food or beverages shall not be prepared on licensed premises for sale [~~or client consumption~~]. Pre-packaged food or beverages may be sold to or consumed by clients.

(g) For public health and safety, licensed premises shall eliminate any strong odors through adequate ventilation, including but not limited to, exhaust fans and air filtration to exhaust chemicals and fumes away from the public area and to provide for the input of fresh air.

(h) Licensed premises shall not be utilized for living or sleeping purposes, or any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public. An establishment that is attached to a residence must have an entrance that is separate and distinct from the residential entrance. Any door between a residence and a licensed facility must be closed during business hours.

(i) No animals with the exception of those providing assistance to individuals are allowed in establishments. Covered aquariums are allowed provided that they are maintained in a sanitary condition.

§82.120. Technical Requirements--Curricula.

(a) - (e) (No change.)

(f) The curriculum for the hair braiding specialty certificate of registration consists of 35 hours as follows:
Figure: 16 TAC §82.120(f)

(g) The curriculum for the hair weaving specialty certificate of registration consists of 300 hours as follows:
Figure: 16 TAC §82.120(g)

(h) [~~(f)~~] The curriculum for a barber refresher course consists of 300 hours as follows:
Figure: 16 TAC §82.120(h)
[~~Figure: 16 TAC §82.120(f)~~]

(i) [~~(g)~~] The changes to this section, as adopted by the commission on June 14, 2006, shall apply to students who enroll in a barber school on or after September 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703401
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §§213.20, 213.27 - 213.30, 213.33

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §§213.20, 213.27, 213.28, 213.29, 213.30 and 213.33 pertaining to Practice and Procedure. Sections 213.20, 213.28, 213.29, and 213.33 are proposed for amendment pursuant to the changes to the Nursing Practice Act, Texas Occupations Code ch. 301, during the 80th Legislative Session the Board's Sunset Review. The proposed amendments to §213.27 and §213.30 are for the purpose of deleting obsolete portions of the rules. The proposed amendments to §§213.28, 213.29 and 213.33 were reviewed by the Board's Eligibility and Disciplinary Task Force during a July 13, 2007, meeting and the task force subsequently recommended their approval by the Board at its July 2007 board meeting. A rule review for Chapter 213 was published in the July 13, 2007, edition of the *Texas Register*.

The proposed amendment to §213.20 is pursuant to House Bill 2426 (Sunset Bill). This bill amended the Nursing Practice Act to include §301.167 related to *Negotiated Rulemaking; Alternative Dispute Resolution*. Section 301.167 requires the Board to "develop and implement a policy to encourage the use of...appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction." The statute continues as follows: "The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies." The amendment proposed in §213.20 implements this requirement.

The proposed amendments to §213.27 and §213.30 are for the sole purpose of deleting similar subsections of the rules that are not applied and, therefore, obsolete. Although the board views all felonious conduct seriously, mitigating factors may exist that justify some individuals being allowed to practice as a nurse. The criminal conduct must be deemed to affect the practice of nursing, and consideration must be given regarding: (1) the extent and nature of the person's past criminal activity; (2) the age of the person when the crime was committed; (3) the amount of time that has elapsed since the person's last criminal activity; (4) the conduct and work activity of the person before and after the criminal activity; (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and (6) other evidence of the person's fitness, including letters of recommendation...." Consideration of these factors make these subsections unnecessary.

House Bill 2426 (Sunset Bill) amended the Nursing Practice Act to include §301.1545 and §301.452(d) related to *Criminal History Information in Licensing and Disciplinary Decision*. Section 301.1545 requires the Board to "list the offenses for which a conviction would constitute grounds for the board to take action... or for which placement on deferred adjudication community supervision would constitute grounds for the board to take action under this chapter." Section 301.452(d) requires the board to "establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the board under this section is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing." The amendments proposed in §213.28 implement these requirements.

The Board's Sunset Bill amended the Nursing Practice Act to include §301.410(b) related to *Discipline of Impaired Nurses Who Commit Practice Violations*. Section 301.410(b) creates the requirement that states, "A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed the practice violation." The amendments proposed in §213.29 implement these requirements.

Finally, House Bill 2426 amended the Nursing Practice Act to include §301.4531 related to *Licensing and Regulatory Functions*. Section 301.4531 requires the board to "adopt a schedule of the disciplinary sanctions that the board may impose under this chapter.... The board shall ensure that the severity of the sanction is appropriate to the type of violation or conduct that is the basis for disciplinary action." The statute continues as follows: "(b)...the board shall consider: (1) whether the person: (A) is being disciplined for multiple violations...(B) has previously been the subject of disciplinary action...; (2) the seriousness of the violation; (3) the threat to public safety; and (4) any mitigating factors." When persons are described by subsection (b)(1)(A) and (B) "the board shall consider taking a more severe disciplinary action...." The amendments proposed in §213.33 implement these requirements.

Katherine Thomas, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments

Ms. Thomas, has also determined that for each year of the first five year period the proposed amendments are in effect, the public benefit will be that the Board will more effectively fulfill its mission. There will not be any effect on small businesses or foreseeable anticipated costs to affected individuals as a result of the implementation of these amendments.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas, 78701; by email to *joy.sparks@bne.state.tx.us*; or by facsimile to (512) 305-8101.

The proposed amendments are pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. Texas Occupations Code §§301.410, 301.167, 301.1545, 301.452 and 301.4531 are affected and implemented by these proposed amendments.

§213.20. Informal Proceedings and Alternate Dispute Resolution (ADR).

(a) The Board's policy is to encourage the resolution and early settlement of internal and external disputes, including contested cases, through voluntary settlement processes such as informal proceedings or alternative dispute resolution. Any matter within the Board's jurisdiction may be resolved informally by stipulation, agreed settlement, agreed order, dismissal, or default. These matters may also be resolved using any ADR procedure or combination of procedures described by Chapter 154, Civil Practice and Remedies Code.

(b) - (h) (No change.)

(i) ADR shall be conducted pursuant to the following procedural standards:

(1) Any ADR procedure used to resolve disputes before the Board shall comply with the requirements of the NPA, chapter 2009 of the Government Code, and any model guidelines for the use of ADR issued by the State Office of Administrative Hearings, which may be found at: *http://www.soah.state.tx.us.*

(2) The Board's general counsel or his designee shall be the Board's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

(A) coordinate the implementation of the Board's ADR policy;

(B) serve as a resource for any staff training or education needed to implement the ADR procedures; and

(C) collect data to evaluate the effectiveness of ADR procedures implemented by the Board.

(3) The Board, a committee of the Board, a respondent in a disciplinary matter pending before the Board, the executive director, or a Board employee engaged in a dispute with the executive director or another employee, may request that the contested matter be submitted to ADR. The request must be in writing, be addressed to the DRC, and state the issues to be determined. The person requesting ADR and the DRC will determine which method of ADR is most appropriate. If the person requesting ADR is the respondent in a disciplinary proceeding, the executive director shall determine if the Board will participate in ADR or proceed with the Board's normal disciplinary processes. The matter may be submitted to ADR only upon approval by all concerned parties.

(4) Any costs associated with retaining an impartial third party mediator, moderator, facilitator, or arbitrator, shall be borne by the party requesting ADR.

(5) Agreements of the parties to ADR must be in writing and are enforceable in the same manner as any other written contract. Confidentiality of records and communications related to the subject matter of an ADR proceeding shall be governed by §154.073 of the Civil Practice and Remedies Code.

(6) If the ADR process does not result in an agreement, the matter shall be referred to the Board for other appropriate disposition.

(j) [~~(i)~~] If eligibility matters are not resolved informally, the petitioner may obtain a hearing before SOAH by submitting a written request to the staff.

(k) [~~(j)~~] If disciplinary matters are not resolved informally, formal charges may be filed in accordance with §213.15 of this title (relating to Commencement of Disciplinary Proceedings) and the case may be set for a hearing before SOAH in accordance with §213.22 of this title (relating to Formal Proceedings).

(l) [~~(k)~~] Pre-docketing conferences may be conducted by the executive director prior to SOAH acquiring jurisdiction over the contested case. The executive director, unilaterally or at the request of any party, may direct the parties, their attorneys or representatives to appear before the executive director at a specified time and place for a conference prior to the hearing for the purpose of:

(1) simplifying the issues;

(2) considering the making of admissions or stipulations of fact or law;

(3) reviewing the procedure governing the hearing;

(4) limiting the number of witnesses whose testimony will be repetitious; and

(5) doing any act that may simplify the proceedings, and disposing of the matters in controversy, including settling all or part of the issues in dispute pursuant to §213.20 and §213.21 of this title (Informal Proceedings and Agreed Disposition).

§213.27. Good Professional Character.

(a) - (b) (No change.)

(c) The following provisions shall govern the determination of present good professional character and fitness of a Petitioner, Applicant, or Licensee who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Petitioner, Applicant, or Licensee may be found lacking in present good professional character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.

(1) (No change.)

[~~(2) An individual guilty of a felony under this rule is conclusively deemed not to have present good professional character and fitness and should not file a Petition for Declaratory Order or Application for Endorsement for a period of three years after the completion of the sentence and/or period of probation.~~]

(2) [~~(3)~~] In addition to the disciplinary remedies available to the Board pursuant to Tex. Occ. Code Ann. §301.452(b)(3) and (4), Texas Occupations Code chapter 53, and §213.28 [~~rule 213.28~~], a licensee guilty of a felony under this rule is conclusively deemed to have violated Tex. Occ. Code Ann. §301.452(b)(10) and is subject to appropriate discipline, up to and including revocation.

(d) (No change.)

(e) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after the expiration of the three-year period in [~~(c)(2) above and~~] subsection (f) of this section [~~rule~~], or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (d) of this section [~~above~~] shall be required to prove, by a preponderance of the evidence:

(1) - (2) (No change.)

(f) (No change.)

§213.28. Licensure of Persons with Criminal Offenses.

(a) This section sets out the considerations and criteria in determining the effect of [~~on the eligibility of persons with~~] criminal offenses on the eligibility of a person to obtain a license and the consequences that criminal offenses may have on a person's ability to retain or renew a license as a registered nurse or licensed vocational nurse. [~~as a registered or vocational nurse or those already licensed who renew their license~~] The Board may refuse to approve persons to take the licensure examination, may refuse to issue or renew a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of or received a deferred disposition for a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation.

(b) The practice of nursing involves clients, their families, significant others and the public in diverse settings. The registered and vocational nurse practices in an autonomous role with individuals who are physically, emotionally and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources and relationships. Therefore, criminal behavior whether violent or non-violent, directed against persons, property or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing. The Board considers the following categories of criminal conduct to relate to and affect the practice of nursing:

(1) offenses against the person similar to those outlined in Title 5 of the Texas Penal Code. [~~because:~~]

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) Abandonment/Endangerment of a Child {TPC §22.041}

(ii) Agree to Abduct Child for Remuneration: Younger than Eighteen {TPC §25.031}

(iii) Aiding Suicide: Serious Bodily Injury/Death {TPC §22.08}

(iv) Assault, Aggravated {TPC §22.02}

(v) Capital Murder {TPC §19.03}

(vi) Child Pornography, Possession or Promotion {TPC §43.26(a), (e) (Texas Rules of Criminal Procedure Ch. 62)}

(vii) Indecency with a Child {TPC §21.11(TRCP Ch. 62)}

(viii) Indecent exposure (2 or more counts and/or required to register as sex offender) {TPC §21.08 (TRCP Ch. 62)}

(ix) Injury to Child, Elderly, Disabled {TPC §22.04}

(x) Kidnapping {TPC §20.03, §20.04 (TRCP Ch. 62)}

(xi) Manslaughter {TPC §19.04}

(xii) Murder {TPC §19.02}

(xiii) Online Solicitation of a Minor {TPC §33.021(b), (c), (f); (TRCP Ch. 62)}

(xiv) Prostitution, Compelling {TPC §43.05 (TRCP Ch. 62)}

(xv) Protective Order, Violation {TPC §25.07, §25.071}

(xvi) Sale or Purchase of a Child {TPC §25.08}

(xvii) Sexual Assault {TPC §22.011 (TRCP Ch. 62)}

(xviii) Sexual Conduct, Prohibited {TPC §25.02 (TRCP Ch. 62)}

(xix) Sexual Assault, Aggravated {TPC §22.021 (TRCP Ch. 62)}

(xx) Sexual Performance by Child {TPC §43.24 (d), §43.25(b) (TRCP Ch. 62)}

(xxi) Unlawful Restraint {TPC §20.02}

(xxii) Assault {TPC §22.01(a)(1), (b), (c)}

(xxiii) Criminally negligent homicide {TPC §19.05}

(xxiv) Improper Relationship between Educator and Student {TPC §21.12}

(xxv) Improper photography {TPC §21.15}

(xxvi) Obscenity, Wholesale promotion {TPC §43.23(a), (h)}

(xxvii) Prostitution (3 or more counts) or Aggravated Promotion {TPC §43.02, §43.04}

(xxviii) Resisting Arrest, Use of Deadly Weapon {TPC §38.03(d)}

(xxix) Stalking {TPC §42.072(b)}

(xxx) Harassment {TPC §42.07}

(xxxi) Prostitution or Promotion of {TPC §43.02}

(xxxii) Protective Order, Violation {TPC §25.07, §38.112}

(xxxiii) Resisting Arrest {TPC §38.03(a)}

(xxxiv) Deadly conduct {TPC §22.05(a)}

(xxxv) Obscenity, Participates {TPC §43.23(c), (h)}

(xxxvi) Terroristic Threat {TPC §22.07}

(xxxvii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:

(i) [~~(A)~~] nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(ii) [~~(B)~~] nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may be subject to harm by similar criminal behavior;

(iii) [~~(C)~~] nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients who are vulnerable to exploitation both physically and emotionally;

(iv) [~~(D)~~] nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability; and

(v) [~~(E)~~] nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct [~~may raise questions as to whether that same misconduct will be repeated~~] in the workplace and raises concerns [~~serious questions~~] regarding the individual's ability to provide safe, competent care to patients.

(2) offenses against property, e.g., robbery, burglary and theft, etc.[~~, because:~~]

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) Burglary (if punishable under Penal Code §30.02(d)) {TRCP Ch. 62 (§62.001(5)(D))}

(ii) Robbery {TPC §29.02}

(iii) Robbery, Aggravated {TPC §29.03}

(iv) Arson {TPC §28.02(d)}

(v) Burglary {TPC §30.02}

(vi) Criminal Mischief {TPC §28.03}

(vii) Money Laundering >= $1500 {TPC §34.02(e)(1)-(4)}

(viii) Theft >= $1500 {TPC §31.03(e)(4)-(7)}

(ix) Theft <=$1499 {TPC §31.03(e)(1)-(3)}

(x) Vehicle, Unauthorized Use {TPC §31.07}

(xi) Criminal Trespass {TPC §30.05(a),(d)}

(xii) Cruelty to Animals {TPC §42.091}

(xiii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crimes relate to the practice of nursing because:

(i) [~~(A)~~] nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(ii) [~~(B)~~] nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized and may provide easy opportunity to be victimized by acts involving similar criminal behavior;

(iii) [~~(C)~~] nurses have access to persons who frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility with no security to prevent theft or exploitation;

(iv) [~~(D)~~] nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse;

(v) [~~(E)~~] nurses frequently provide care autonomously without direct supervision and may have access to and opportunity to misappropriate property; and

(vi) [~~(F)~~] nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct [~~may raise questions as to whether that same misconduct will be repeated~~] in the workplace and, therefore, place patients' property at risk.

(vii) certain crimes involving property, such as cruelty to animals and criminal trespass, may also concern the safety of persons and, as such, raise concerns about the propensity of the nurse to repeat similar conduct in the workplace, placing patients at risk.

(3) offenses involving fraud or deception. [~~because:~~]

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) Attempt, Conspiracy, or Solicitation of Ch. 62 offense {TRCP Ch. 62}

(ii) Tampering with a Government Record {TPC §37.10}

(iii) Insurance Fraud: Intent to Defraud {TPC §35.02(a-1), (d)}

(iv) Insurance Fraud: Claim > $500 {TPC §35.02(c)}

(v) Insurance Fraud: Claim <=$500 {TPC §35.02 (c)(1)-(3)}

(vi) Medicaid Fraud > $1500 {TPC §35A.02(b)(4)-(7)}

(vii) Medicaid Fraud < $1500 {TPC §35A.02(b)(2)-(3)}

(viii) Criminal Attempt or Conspiracy {TPC §15.01, §15.02}

(B) These types of crime relate to the practice of nursing because:

(i) [~~(A)~~] nurses have access to persons who are vulnerable by virtue of illness or injury and are frequently in a position to be exploited;

(ii) [~~(B)~~] nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(iii) [~~(C)~~] nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability;

(iv) [~~(D)~~] nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;

(v) [~~(E)~~] the nurse-patient relationship is of a dependent nature; and

(vi) [~~(F)~~] nurses who commit these crimes outside the workplace raise concern about the nurse's propensity to repeat that same misconduct [~~may raise questions as to whether that same misconduct will be repeated~~] in the workplace and, therefore, place patients at risk.

(4) offenses involving lying and falsification. [~~because:~~]

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) False Report or Statement {TPC §32.32, §42.06}

(ii) Forgery {TPC §32.21(c), (d), (e)}

(iii) Tampering with a Governmental Record {TPC §37.10}

(B) These crimes are related to nursing because:

(i) [~~(A)~~] nurses have access to persons who are vulnerable by virtue of illness or injury;

(ii) [~~(B)~~] nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(iii) [~~(C)~~] nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct;

(iv) [~~(D)~~] honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care;

(v) [~~(E)~~] falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future;

(vi) [~~(F)~~] falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity;

(vii) [~~(G)~~] falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure to the Board, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing; and

(viii) [~~(H)~~] a crime of lying or falsification raises concerns about the nurse's propensity to [~~concern that the person may~~] engage in similar conduct while practicing nursing and place patients at risk.

(5) offenses involving the delivery, possession, manufacture, or use of, or dispensing, or prescribing a controlled substance, dangerous drug, or mood-altering substance. [~~because:~~]

(A) These offenses include, but are not limited to, the following crimes, as well as any crime that contains substantially similar or equivalent elements under another state or federal law:

(i) Drug Violations under Health and Safety Code Chs. 481, 482, 483; or

(ii) Driving While Intoxicated (2 or more counts) {TPC §49.09}

(B) These crimes relate to the practice of nursing because:

(i) [~~(A)~~] nurses have access to persons who are vulnerable by virtue of illness or injury;

(ii) [~~(B)~~] nurses have access to persons who are especially vulnerable including the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized;

(iii) [~~(C)~~] nurses provide care to critical care, geriatric, and pediatric patients who are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition;

(iv) [~~(D)~~] nurses are able to provide care in private homes and home-like setting without supervision;

(v) [~~(E)~~] nurses who are chemically dependent or who abuse drugs or alcohol may have impaired judgment while caring for patients and are at risk for harming patients; and

(vi) [~~(F)~~] an offense regarding delivery, possession, manufacture, or use of, or dispensing, or prescribing a controlled substance, dangerous drug or mood altering drug raises concern about the nurse's propensity to repeat that same misconduct [~~may raise questions as to whether that same misconduct will be repeated~~] in the workplace.

(vii) DWI offenses involve the use and/or abuse of mood altering drugs while performing a state licensed activity affecting public safety; repeated violations suggest a willingness to continue in reckless and dangerous conduct, or an unwillingness to take appropriate corrective measures, despite previous disciplinary action by the state.

(c) (No change.)

(d) Crimes listed under subsections (b)(1)(A)(i)-(xxi), (b)(2)(A)(i)-(iii), and (b)(3)(A)(i) of this section are offenses identified under §301.4535 of the NPA. As such, these offenses require the board to suspend a nurse's license, revoke a license, or deny issuing a license to an applicant upon proof of initial conviction.

(e) [~~(d)~~] In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of or received a deferred order for a crime, shall consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) other evidence of the person's present fitness, including letters of recommendation from: prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community

where the person resides; and any other persons in contact with the convicted person.

(f) [~~(e)~~] It shall be the responsibility of the applicant, to the extent possible, to obtain and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act. The applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted or received a deferred order.

(g) [~~(f)~~] If requested by staff, it shall be the responsibility of the individual seeking licensure to ensure that staff is provided with legible, certified copies of all court and law enforcement documentation from all jurisdictions where the individual has resided or practiced as a licensed health care professional. Failure to provide complete, legible and accurate documentation will result in delays prior to licensure or renewal of licensure and possible grounds for ineligibility.

(h) The fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the Nursing Practice Act or rules of the Board, the board may consider such evidence as a factor in its deliberations regarding any decision to grant a license, restrict a license, or impose licensure discipline.

(i) [~~(g)~~] Behavior that would otherwise bar or impede licensure may be deemed a "Youthful Indiscretion" as determined by an analysis of the behavior using the factors set out in §213.27 of this title (relating to Good Professional Character), subsections (a) - (f) [~~(e)~~] of this section and at least the following criteria:

(1) age of 22 years or less at the time of the behavior;

(2) absence of criminal plan or premeditation;

(3) presence of peer pressure or other contributing influences;

(4) absence of adult supervision or guidance;

(5) evidence of immature thought process/judgment at the time of the activity;

(6) evidence of remorse;

(7) evidence of restitution to both victim and community;

(8) evidence of current maturity and personal accountability;

(9) absence of subsequent undesirable conduct;

(10) evidence of having learned from past mistakes;

(11) evidence of current support structures that will prevent future criminal activity; and

(12) evidence of current ability to practice nursing in accordance with the Nursing Practice Act, Board rules and generally accepted standards of nursing.

(j) [~~(h)~~] With respect to a request to obtain a license from a person who has a criminal history, the executive director is authorized to close an eligibility file when the applicant has failed to respond to a request for information or to a proposal for denial of eligibility within 60 days thereof.

(k) [~~(i)~~] The board shall revoke a license or authorization to practice as an advanced practice nurse upon the imprisonment of the licensee following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.

(l) [~~(j)~~] The board shall revoke or deny a license or authorization to practice as an advanced practice nurse for the crimes listed in Texas Occupations Code §301.4535.

§213.29. Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters.

(a) - (d) (No change.)

(e) Prior intemperate use, [~~or~~] mental illness, or diminished mental capacity is relevant only so far as it may indicate current intemperate use or lack of fitness.

(f) (No change.)

(g) With respect to mental illness or diminished mental capacity in eligibility, disciplinary, and renewal matters, the executive director is authorized to propose conditional orders for individuals who have experienced mental illness or diminished mental capacity within the past five years provided:

(1) - (2) (No change.)

(h) In renewal matters involving chemical dependency use, [~~or~~] mental illness, or diminished mental capacity, the executive director shall consider the following information from the preceding renewal period:

(1) - (3) (No change.)

(i) (No change.)

§213.30. Declaratory Order of Eligibility for Licensure.

(a) - (e) (No change.)

(f) If a petitioner's/applicant's potential ineligibility is due to criminal conduct and/or conviction, the following provisions shall govern the eligibility of the applicant under §213.28 of this title (relating to Licensure of Persons with Criminal Convictions):

(1) (No change.)

[~~(2) An individual guilty of a felony under this rule is conclusively deemed not to have present good professional character and fitness and should not petition the Board for a Declaratory Order of Eligibility for Licensure for a period of three years after the completion of the sentence and/or period of probation.~~]

(2) [~~(3)~~] Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the petitioner or applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the petitioner or applicant possesses present good professional character and fitness.

(g) - (h) (No change.)

§213.33. Factors Considered for Imposition of Penalties/Sanctions and/or Fines.

(a) The following factors shall be considered by the executive director when determining whether to dispose of a disciplinary case by fine or by fine and stipulation and the amount of such fine. These factors shall be used by the State Office of Administrative Hearings (SOAH) when recommending a sanction and the Board in determining the appropriate penalty/sanction in disciplinary cases:

(1) - (13) (No change.)

(b) - (f) (No change.)

(g) In accordance with the provisions of the Texas Occupations Code and the Nursing Practice Act (NPA), and in keeping with the obligation to protect the consumer of nursing services from the unsafe, incompetent or unprofessional nurse, the Board of Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the NPA. The purpose of these guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of the provisions in Chapter 301, Subchapter J. The disciplinary guidelines are based upon a single count violation of each provision listed. Multiple violations of the same provision or rule, or other unrelated violations included in the administrative complaint, will be grounds for an enhancement of penalties subject to §301.4531(c)(1) and (2), of the NPA. All penalties at the upper range of the sanctions set forth in the guidelines, such as suspension, revocation, or surrender, include lesser penalties, i.e., fine, remedial education, or probation, which may also be included in the final penalty at the Board's discretion.

(1) In addition to subsection (a) of this section, the Board shall consider the following factors, as set forth in §301.4531(b) of the NPA, when determining the appropriate disciplinary action:

(A) whether the person is being disciplined for multiple violations of the NPA, or its derivative rules and orders;

(B) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;

(C) the seriousness of the violation;

(D) the threat to public safety; and

(E) any mitigating factors.

(2) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions under the authority of §301.453 (a) and (b), of the NPA:

(A) Denial of the person's application for a license, license renewal, or temporary permit;

(B) Approval of the person's application for a license, license renewal, reinstatement of a revoked, suspended or surrendered license, or temporary permit; and set reasonable probationary stipulations as a condition of issuance, reinstatement or renewal of the license or temporary permit. Additionally, the Board may determine in accordance with §301.468, of the NPA, that an order denying a license application, license renewal or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:

(i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license;

(ii) submit to an evaluation as outlined in subsection (e) of this section;

(iii) participate in a program of education or counseling prescribed by the Board;

(iv) limit specific nursing activities and/or periodic board review;

(v) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board;

(vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or

(vii) perform public service which the Board considers appropriate;

(C) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(i) participate in a program of education or counseling prescribed by the Board;

(ii) practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board;

(iii) perform public service which the Board considers appropriate;

(iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or

(v) limit specific nursing activities and/or periodic board review;

(D) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(i) participate in a program of education or counseling prescribed by the Board;

(ii) practice for a specified period of at least two years under the direction of a registered nurse or vocational nurse designated by the Board;

(iii) perform public service which the Board considers appropriate;

(iv) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or

(v) limit specific nursing activities and/or periodic board review.

(E) Limitation or restriction of the person's license, including limits on specific nursing activities or periodic board review:

(F) Suspension of the person's license. The Board may determine that the order of suspension be enforced and active for a specific period or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

(i) Limit the practice of the person to, or excluding, one or more specified activities of professional or vocational nursing;

(ii) submit to an evaluation as outlined in subsection (e) of this section;

(iii) submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license;

(iv) participate in a program of education or counseling prescribed by the Board;

(v) practice for a specified period of not less than two years under the direction of a registered nurse or vocational nurse designated by the Board;

(vi) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing; or

(vii) remit payment of the administrative penalty, fine, or assessment of hearing costs.

(G) Acceptance of a Voluntary Surrender of a nurse's license(s);

(H) Revocation of the person's license;

(I) Require participation in remedial education course or courses prescribed by the Board which are designed to address those competency deficiencies identified by the Board;

(J) Assessment of a fine;

(K) Assessment of costs as authorized by §301.461, Texas Occupation Code, and §2001.177, Texas Government Code; or

(L) Require successful completion of a Board approved peer assistance program.

(M) Every disciplinary order issued by the Board will require that the person subject to the order will participate in a program of education or counseling prescribed by the Board which at a minimum will include a review course in nursing jurisprudence and ethics.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2007.

TRD-200703374
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 305-6823

♦ ♦ ♦

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.17

The Board of Nurse Examiners proposes a new rule, 22 Texas Administrative Code §217.17 (Texas Nursing Jurisprudence Exam) pertaining to Licensure, Peer Assistance and Practice. This new rule is being proposed pursuant to bills passed in the 80th Legislative Session and the Board's Sunset Review. House Bill 2426 (Sunset Bill) amends the Nursing Practice Act by amending section 301.252 (License Application) of the Texas Occupations Code.

Although the jurisprudence exam has not yet been developed and cannot be implemented until September 1, 2008, or later, the Sunset Bill requires the Board to adopt all rules required by the Sunset Bill by January 1, 2008. The new rule is for the purpose of complying with this Bill. This rule will most likely need to be amended when the exam is developed and as the time draws nearer to the actual implementation of the jurisprudence exam requirement. In addition, 22 Texas Administrative Code §§217.2, 217.4, and 217.5 are in the process of being proposed for amendment to include the jurisprudence exam requirement for initial licensure effective September 1, 2008.

Katherine Thomas, executive director, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Katherine Thomas, executive director, has determined that for each year of the first-five year period the proposed new rule is in effect, the public benefit will be that nurses will be more acquainted with the laws and rules that regulate the profession. There will be no cost to small businesses or affected individuals as a result of this proposed rule except for the prospective cost of the jurisprudence exam to initial applicants for a Texas nursing license.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas, 78701; by email to *joy.sparks@bne.state.tx.us*; or by facsimile to (512) 305-8101.

The proposed new rule is pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code §301.252 will be affected by the implementation of this rule.

§217.17. Texas Nursing Jurisprudence Exam (NJE).

(a) In this chapter, when applicants are required to pass the NJE exam, applicants must pass the NJE with a score of 75 or better. Should the applicant fail to achieve a minimum grade of 75 on the NJE, such applicant, in order to be licensed, shall retake the NJE until such time as a minimum average grade of 75 is achieved.

(b) An examinee shall not utilize a proxy or bring books, notes, or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress.

(c) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(d) A person who has passed the NJE shall not be required to retake the NJE for another or similar license, except as a specific requirement of the board.

(e) If the applicant should fail one of the examinations, the grade of the examination which the applicant initially passed may be used for the purpose of licensure by examination for a period of two years from the date of passing the initial examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2007.

TRD-200703363
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 305-6823

♦ ♦ ♦

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §§371.3, 371.5, 371.7

The Texas State Board of Podiatric Medical Examiners proposes the changes to §371.3, regarding Fees; §371.5, regarding Applicant for License; and §371.7, regarding Qualifications for Licensure. The changes to §371.3 are being proposed to cover the cost of the Article VIII salary increase contingency rider approved by the 80th Legislature for Article VIII agencies. The changes to §371.5 are being proposed to allow provisional applicants an equivalent amount of opportunities to hold a license consistent with the number of times an individual may sit for examination for a license, which is 3 times. The proposed changes to §371.5 are also being proposed to meet the Sunset management requirements adopted by the 79th Legislature to simplify the licensing process for active podiatrists from out of state by eliminating the requirement that they pass a clinical skills exam if it was not required of Texas licensees at the time the out-of-state licensee became licensed. The changes to §371.7 are being proposed to clarify that the University of Texas at Austin will review foreign transcripts. The changes to §371.7 are also being proposed to meet the Sunset management requirements adopted by the 79th Legislature to simplify the licensing process for active podiatrists from out of state by eliminating the requirement that they pass a clinical skills exam if it was not required of Texas licensees at the time the out-of-state licensee became licensed.

Hemant Makan, Executive Director, has determined that, for each year for the first five years the proposed rule amendment is effective, there will be no fiscal implications for state or local government as a result of adopting the section.

Mr. Makan has also determined that, for each year for the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of adopting the changes for §371.3 will be to retain licensure and enforcement staff to ensure public safety. The public benefit anticipated as a result of adopting the proposed changes for §371.5 will be an increase of access to podiatric medical care by relaxing certain clinical requirements which will allow veteran podiatrists the ability to practice in Texas with expedited license requirements. The public benefit anticipated as a result of adopting the proposed changes for §371.7 will be the assurance that acceptable foreign education meet United States undergraduate standards as qualified by the University of Texas at Austin. The public benefit anticipated as a result of adopting the proposed changes for §371.7 will be an increase of access to podiatric medical care by relaxing certain clinical requirements which will allow veteran podiatrists the ability to practice in Texas with expedited license requirements. There will be no effect on small or micro-businesses. The minimal cost to persons (i.e., licensees) who are required to comply with the proposed change to §371.3 will be $5.00. There will be no minimal costs to persons who are required to comply with the proposed change to §371.5 or §371.7.

Comments on or about the proposed changes may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Janie.Alonzo@foot.state.tx.us.

The changes are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The proposed change for §371.3 implements Texas Occupations Code, §202.153, Fees. The proposed change for §371.5 implements Texas Occupations Code, §202.254, Examination and §202.260, Provisional License. The proposed changes for §371.7 implement Texas Occupations Code, §202.252, License Application; §202.254, Examination; and §202.260, Provisional License.

§371.3. Fees.

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

(1) Examination--$250 plus $39 fee for HB660 (criminal history record information)

(2) Re-Examination--$250 plus $39 fee for HB660 (criminal history record information)

(3) Temporary License--$125

(4) Extended Temporary License--$50

(5) Temporary Faculty License--$40

(6) Provisional License--$125

(7) Initial Licensing Fee--$444 [~~$439~~] plus $5 fee for HB2985

(8) Annual Renewal--$444 [~~$439~~] plus $1 fee for HB2985

(9) Renewal Penalty--as specified in Texas Occupations Code, §202.301(d).

(10) Non certified podiatric technician registration--$35

(11) Non certified podiatric technician renewal--$35

(12) Hyperbaric Oxygen [~~H.B.O.~~] Certificate--$25

(13) Nitrous Oxide Registration--$25

(14) Duplicate License--$50.

(15) Copies of Public Records--The charges to any person requesting copies of any public record of the Board will be the charge established by the appropriate state authority [~~Texas Building and Procurement Commission~~]. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

(16) Statute and Rule Notebook--provided at cost to the agency.

(17) Duplicate Certificate--$10.

(18) HB660 (criminal history record information)--$39.

§371.5. Applicant for License.

(a) (No change.)

(b) Any person who wishes to sit [~~set~~] for examination, shall submit a written application on a form provided by the Board. The applicant shall verify by affidavit the information in the application.

The Board may refuse to admit to the examination or grant a license to any applicant who knowingly submits false information to the Board.

(c) - (i) (No change.)

(j) Provisional License.

(1) Requirements for Provisional License. On application for examination, an applicant may apply for a provisional license under the following circumstances.

(A) The applicant must be licensed in good standing as a podiatric physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Podiatric Medical Practice Act, subsequent amendments, and rules and must furnish proof of such licensure on Board forms provided.

(B) The applicant must have passed a national or other examination recognized by the Board relating to the practice of podiatric medicine and must submit a true and correct copy of the applicant's score report.

(C) The applicant must not have been subject to denial [~~failed an examination~~] for a license by virtue of: [~~conducted by the Board.~~]

(i) having violated any provision under Texas Occupations Code Chapter 53 or §202.253;

(ii) Applicant of provisional license meeting the requirements of Board rule §371.21 related to "Re-Examination."

(D) The applicant's license to practice podiatric medicine must not have been revoked or suspended in any jurisdiction.

(2) Sponsorship. An applicant for provisional licensure must be sponsored by a person currently licensed by the Board for at least five years and in good standing under the Podiatric Medical Practice Act with the following conditions applicable.

(A) Prior to practice in Texas, on forms provided by the Board, the sponsor licensee will certify to the Board the following:

(i) that the applicant for provisional licensure will be working within the same office as the licensee, under the direct supervision of the sponsor licensee; and

(ii) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) Sponsor licensee will be held responsible for the unauthorized practice of podiatric medicine should such provisional license expire.

(3) Hardship. An applicant for a provisional license may be excused from the requirement of sponsorship of this rule if the Board determines that compliance with this subsection constitutes a hardship to the applicant.

(4) Application and $125 Fee. The Board shall issue a license pursuant to this rule to the holder of a provisional license if:

(A) The applicant for provisional licensure will be subject to all application requirements required by this chapter and subject to the applicable examination fees established under §371.3(b)(1) of this title (relating to Fees). In addition, the applicant will be subject to a fee for issuance of a provisional license.

(B) No provisional license can be issued until all application forms and fees are received in the Board office and the application is approved.

(C) A provisional license expires upon the passage of 180 days or notice by the Board of the applicant's successful passage or failure of all examinations required by this chapter, whichever comes first. It shall be the responsibility of the applicant and sponsor to return the provisional license to the Board office on expiration.

(D) The applicant's failure to sit for the first scheduled Board examination following application for examination invalidates the provisional license, unless in the discretion of the Executive Director sufficient and reasonable evidence regarding nonappearance exists.

(E) A provisional license may be issued a maximum of three times to the same applicant and as provided in Board rule §371.21 related to "Re-examination." [~~Each applicant for provisional license shall receive only one nonrenewable license prior to the issuance of a license.~~]

(F) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Podiatric Medical Practice Act or Board rules, such provisional license will be subject to disciplinary action including revocation.

(5) At the discretion of the Board, the GPME requirement set forth in §371.7(g) of "Qualifications for Licensure" of this title may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the Board can show an acceptable record from that state and from all other states under which the applicant has ever been licensed.

(6) At the discretion of the Board, the Board may excuse an applicant for a license from the National Board Part III (i.e. PM Lexis) requirement set forth in §371.7(e), "Qualifications for Licensure", if the Board determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills (i.e. PM Lexis) when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the Board relating to the safe care and treatment of patients.

(7) A showing of an acceptable record under this section is defined to include, but is not limited to:

(A) a showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of a felony or a crime of moral turpitude; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.

(B) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the Board by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the Board's determination of admittance to licensure in the State of Texas.

(C) The applicant shall obtain and submit to the Board a letter directly from any and all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.

§371.7. Qualifications for Licensure.

(a) - (b) (No change.)

(c) Each applicant shall have completed the number of college courses required by the Texas Occupations Code, §202.252(b)(3), and graduated from an accredited college of Podiatric Medicine in the United States. The applicant's entire course of instruction must be from such an approved college, and the college must have been so approved during the entire course of the applicant's course of instruction. All educational attainments or credits for evaluation under Texas Occupations Code, §202.252(e), must be completed within the United States. The board may not accept educational credits attained in a foreign country that are not acceptable to The University of Texas for credit toward a bachelor's degree. Foreign undergraduate education credits and/or transcripts will be submitted to the Graduate and International Admissions Center at The University of Texas at Austin for evaluation in addition to the applicant submitting a fee payable to UT-Austin in the amount of $100.00. The Board will submit all materials and payment to UT-Austin and will rely on the report from UT-Austin to consider an applicants qualifications under this subsection.

(d) - (i) (No change.)

(j) At the discretion of the Board, the GPME requirement set forth in subsection (g) of this section may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the Board can show an acceptable record from that state and from all other states under which the applicant has ever been licensed.

~~[(1) A showing of an acceptable record under this subsection is defined to include, but is not limited to, a showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action, no conviction of a felony or a crime of moral turpitude, no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization or extended-care facility, and no dishonorable discharge from military service.]~~

~~[(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the Board by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the Board's determination of admittance to licensure in the State of Texas.]~~

~~[(3) The applicant shall obtain and submit to the Board a letter from any and all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.]~~

(k) At the discretion of the Board, the Board may excuse an applicant for a license from the National Board Part III (i.e. PM Lexis) requirement set forth in subsection (e) of this section if the Board determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills (i.e. PM Lexis) when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the Board relating to the safe care and treatment of patients.

(l) A showing of an acceptable record under this section is defined to include, but is not limited to:

(1) A showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of a felony or a crime of moral turpitude; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.

(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the Board by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the Board's determination of admittance to licensure in the State of Texas.

(3) The applicant shall obtain and submit to the Board a letter directly from any and all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703326
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 305-7000

♦ ♦ ♦

CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.31

The Texas State Board of Podiatric Medical Examiners proposes the changes to §376.31 regarding Consequences of Background and Criminal History Checks. The changes to §376.31 are being proposed to meet the Sunset management requirements adopted by the 79th Legislature to adopt rules that list the specific offenses that would permit the board to revoke, suspend, or deny a license.

Hemant Makan, Executive Director, has determined that, for each year for the first five years the proposed rule amendment is effective, there will be no fiscal implications for state or local government as a result of adopting the section.

Mr. Makan has also determined that, for each year for the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of adopting the changes for §376.31 will be clarification of which criminal offenses related to the practice of podiatric medicine are subject to revocation, suspension, or denial of licensure. There will be no effect on small

or micro-businesses. There will be no costs to persons who are required to comply with the change to §376.31.

Comments on or about the proposed changes may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Janie.Alonzo@foot.state.tx.us.

The changes are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The proposed change for §376.31 implements Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction and Texas Occupations Code, §202.253, Grounds for Denial of License.

§376.31. Consequences of Background and Criminal History Checks.

(a) - (f) (No change.)

(g) Board [~~The board shall utilize~~] guidelines utilized for determining the reasons why a particular crime is related to the practice of podiatry and other factors that affect the decision as to whether the past criminal history would render the individual ineligible for licensure shall be published on the "Complaints" page of the Board's website.

(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 30, 2007.

TRD-200703328
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 305-7000

♦ ♦ ♦

CHAPTER 389. ORGANIZATION AND STRUCTURE

22 TAC §§389.1, 389.3, 389.5, 389.7, 389.9

The Texas State Board of Podiatric Medical Examiners proposes new §§389.1, 389.3, 389.5, 389.7, and 389.9, regarding Organization and Structure. The new rules §§389.1, 389.3, 389.5, 389.7, and 389.9 are being proposed to meet the Sunset management requirements adopted by the 79th Legislature to implement policies that clearly separate the policy making responsibilities of the board and the management responsibilities of the Executive Director and staff of the board. These new rules also provide remedies for addressing board member conflicts of interest.

Hemant Makan, Executive Director, has determined that, for each year for the first five years the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of adopting the section.

Mr. Makan has also determined that, for each year for the first five years the proposed new rules are in effect, the public benefit anticipated as a result of adopting the proposed new rules will be the assurance that the board's functions remain mission focused to protect the public from the unsafe of podiatric medicine. There will be no effect on small or micro-businesses. There will be no costs to persons who are required to comply with the new rules.

Comments on or about the new rules may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Janie.Alonzo@foot.state.tx.us.

These rules are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed new rules implement the Texas Occupations Code, §202.101, Division of Responsibilities.

§389.1. Purpose.

The purpose of these rules is to avoid, detect, address and remedy conflicts of interest by developing and implementing policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board consistent with the Governor's Mission and Governor's Philosophy, Agency Mission and Agency Philosophy and the Strategic Planning Process.

§389.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Board*--The Texas State Board of Podiatric Medical Examiners as established and authorized by the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §§202.001, et seq.

(2) *Board Member*--A person lawfully appointed by the governor to serve a term as set by law on the board.

(3) *Executive Director*--An employee of the Board who manages the day-to-day operations of the Board.

(4) *Investigator*--Employee, Agent or Person designated by the board to conduct investigations on behalf of the board. This term includes Podiatric Medical Reviewers.

§389.5. Professional Conduct.

A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use their official position to imply professional superiority or competence.

(10) A board member should avoid the use of their official position as an endorsement in any health care related matter. Because an expert witness, by necessity, must disclose the witness's resume, which will include membership on the board, and because any health care related lawsuit could become the subject of a board investigation, a board member should not appear as an expert witness in any case.

(11) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

§389.7. Membership and Employee Restrictions.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. §§201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

§389.9. Grounds for Removal.

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Texas Occupations Code §202.051 or §202.053;

(2) does not maintain during service on the board the qualifications required by Texas Occupations Code §202.051 or §202.053;

(3) is ineligible for membership under Texas Occupations Code §202.054;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the board.

(b) The board shall develop and implement an additional "Division of Responsibilities" policy to set forth clarifications and separations of power, and remedies to include penalties for the abuse of any power by a board member or employee.

(c) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(d) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 3, 2007.

TRD-200703381
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 305-7000

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 517. FINANCIAL ASSISTANCE

SUBCHAPTER B. COST-SHARE ASSISTANCE FOR BRUSH CONTROL

31 TAC §517.30

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to Title 31 of the Texas Administrative Code, Part 17, Chapter 517, Subchapter B, Cost-Share Assistance for Brush Control, §517.30(h), concerning the agency's ability to individually consider alternate resource treatment plans as an acceptable brush control plan . Specifically, this proposed amendment provides the agency some flexibility in accepting an alternative brush control plan that may better suit landowner management plans.

Mr. Kenny Zaijcek, Fiscal Officer, State Board has determined that, for the first five-year period, there will be no fiscal implications for state or local government as a result of administering this proposed amendment.

Mr. Zaijcek has also determined that, for the first five-year period this proposed amendment is in effect, the public benefit anticipated as a result of administering this amended rule will be the possibility of increased participation in the brush control program and potential water enhancement as a result of that participation.

There are no anticipated costs to small businesses or individuals resulting from this proposed amendment.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, ext. 231.

The amendment is proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code and under §203.012, which authorizes the board to adopt reasonable rules necessary to carry out the chapter.

No other statutes, articles, or codes are affected by this proposed amendment.

§517.30. Eligibility for Cost-share Assistance.

(a) - (g) (No change.)

(h) Requirement to develop a brush control plan. In order to qualify for cost-share assistance, an eligible person, including political subdivisions, shall develop a brush control plan. Brush control plans shall meet resource management system requirements on acres planned, as set forth in the FOTG. The State Board may grant an exception to the RMS requirement if it finds an alternate plan adequate.

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703393
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: September 16, 2007
For further information, please call: (254) 773-2250, x252

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1202

The Comptroller of Public Accounts proposes an amendment to §3.1202, concerning warning notice signs. Subsection (d) is being amended pursuant to Senate Bill 91 and Senate Bill 143, 80th Legislature, 2007. Senate Bill 91 and Senate Bill 143 both amended the health warning notice signs to include wording informing the public of the health risks to women who smoke while pregnant and the possible effects smoking can have on babies born to women who smoke while pregnant. Subsection (b) is amended to delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD). Non-substantive changes are also made to improve grammar and general readability.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by expanding the dissemination of notices warning pregnant women and their babies about the potential health affects of smoking and clarifying the associated responsibilities of tobacco retailers. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, §161.084.

§3.1202. Warning Notice Signs.

(a) Warning Notice Signs. Each person who sells cigarettes or tobacco products at retail or by vending machines must post a warning notice sign in a location that is conspicuous to all employees and customers and that is close to the cash register, check-out stand, or vending machine where cigarettes or tobacco products may be purchased. It is a violation to intentionally fail to display a sign as prescribed by this section (a Class C misdemeanor).

(b) Sign Distribution. The comptroller upon request will provide the warning notice signs without charge to any person who sells cigarettes or tobacco products, including distributors or wholesale dealers of cigarettes or tobacco products in this state for distribution to persons who sell cigarettes or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection. Requests for the warning notice signs may be made by calling the Comptroller of Public Accounts toll free at 1-800-862-2260, or by writing to the attention of the Account Maintenance Division, Comptroller of Public Accounts, 111 East 17th Street, Austin, Texas 78774-0100. In Austin, call (512) 463-1693. [~~From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.~~] A request must include the number of signs needed, and the person and address to whom the signs are to be mailed.

(c) Alternate Signs. Retailers, distributors, and wholesale dealers may develop their own warning notice signs provided the signs meet minimum size and design specifications, including wording

and font size, described in subsection (d) of this section. A retailer, distributor, or wholesale dealer may submit a sample of its proposed sign for review to the address as noted in subsection (b) of this section [above].

(d) Sign Design and Minimum Size Requirements. The design, minimum size, and placement location of each sign are as follows.

(1) Design. Each sign must be designed according to the following:

(A) it must contain the following statutory language: "PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO $500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING 1-800-345-8647. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT."

(B) retailers must display the English version. The comptroller will make a Spanish version available. Both the Spanish and English versions may be posted.

(2) Size and Placement. The sign to be posted on or near:

(A) the cash register or check-out stand must be no less than 8-1/2 inches wide by 14 inches in length. The font size for the statutory language that must appear on the sign must be no less than 14-point type. An 8-1/2 inches wide by 14 inches in length warning notice sign must be conspicuous from each cash register or check-out stand where cigarettes or tobacco products may be purchased. If a retailer chooses, an additional 3 inches wide by 7 inches in length warning notice sign may be conspicuously placed on each cash register or check-out stand where cigarettes or tobacco products may be purchased;

(B) the vending machines must be no less than 3 inches wide by 7 inches in length. The font size for the statutory language that must appear on the sign must be no less than 10-point type.

(e) Effective Date. The warning notice signs must be displayed in the appropriate locations beginning January 1, 1998.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2007.

TRD-200703370
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 475-0387

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES SUBCHAPTER A. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

40 TAC §§108.23, 108.27, 108.47, 108.48

The Texas Health and Human Services Commission proposes amendments and new sections to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 108, concerning the Division for Early Childhood Intervention. This proposal amends §108.23, Definitions, and §108.27, Program Administration for Comprehensive Services; and adds new §108.47, Early Intervention Specialist Code of Ethics, and new §108.48, Violations of the EIS Code of Ethics.

These changes are being proposed pursuant to 20 U.S.C.A. 1435(a)(8), to provide updated definitions; to provide changes to continuing professional education; to add an Early Intervention Specialist Code of Ethics; and to provide information regarding violations of ethical standards.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with Human Resources Code, Chapter 73, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Barbara M. Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

The amendments and new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.23. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Dual relationships--Dual relationships occur when the early intervention specialist engages in activities with the family that goes beyond his or her professional boundaries.

(11) [(10)] Early Childhood Intervention Program (ECI)--The total effort in Texas directed toward meeting the needs of children eligible under this chapter and their families.

(12) [(11)] Evaluation--The procedures used by appropriate qualified personnel to determine the child's initial and continuing

eligibility, consistent with the definition of infants and toddlers with developmental delay, including determining the status of the child in areas of cognitive development, physical development, communication development, social-emotional development, and adaptive development or self-help skills.

(13) Exploit--To use or manipulate to one's own advantage.

(14) Family--A group of individuals in the same household who identify themselves as a family. Members of a family may include, for example, parents, adoptive parents, step-parents, children, adult dependents, and other people residing in the household and considered as members of the family.

(15) [~~(12)~~] Family Educational Rights and Privacy Act of 1974 (FERPA)--20 U.S.C. Section 1232g; 34 CFR Part 99 - Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(16) [~~(13)~~] Full year services--The availability of an array of comprehensive services throughout the calendar year.

(17) [~~(14)~~] Include(ing)--The items named are not all of the possible items that are covered whether like or unlike the ones named.

(18) [~~(15)~~] Individual professional development plan (IPDP)--A written plan for in-service or continuing education to be prepared annually for each staff person in a program.

(19) [~~(16)~~] Individualized family service plan (IFSP)--A written plan, developed by the interdisciplinary team, based on all assessment and evaluation information, including the family's description of their strengths and needs, which outlines the early intervention services for the child and the child's family.

(20) [~~(17)~~] Intake--The first face-to-face contact with a parent following initial referral.

(21) [~~(18)~~] Interdisciplinary team--The child's parent(s) and a minimum of two professionals from different disciplines who meet to share evaluation information, determine eligibility, assess needs, and develop the IFSP. The team must include the service coordinator who has been working with the family since the initial referral or the person responsible for implementing the IFSP and a person directly involved in conducting the evaluations and assessments.

(22) Intimate Relationships--Sexual relationships, or extremely close and familiar friendships.

(23) [~~(19)~~] Parent--A natural or adoptive parent of a child, a guardian, a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare), or an appointed surrogate parent. Term does not include state if child is ward of the state.

(24) [~~(20)~~] Personally identifiable information--Information which includes:

(A) the name of the child;

(B) the name of the child's parent, or other family member;

(C) the address of the child, parent, or other family member;

(D) a personal identifier, such as the child's or parent's social security number; or

(E) a list of personal characteristics or other information that would make it possible to identify or trace the child, the parent, or other family member, with reasonable certainty.

(25) [~~(21)~~] Primary referral sources--Individuals or organizations which refer children including but not limited to:

(A) hospitals, including prenatal and postnatal care facilities;

(B) physicians;

(C) parents;

(D) day care programs;

(E) local educational agencies;

(F) public health facilities;

(G) other social service agencies;

(H) other health care providers; and

(I) congregate care facilities.

(26) Professional Boundaries--Professional boundaries are physical and emotional limits to the relationship between the EIS and the family. Professional boundaries help to maintain a relationship that keeps the focus on helping the family.

(27) [~~(22)~~] Program--A division of a local agency with the express and sole purpose of implementing comprehensive early childhood intervention services to children with developmental delays and their families.

(28) [~~(23)~~] Provide--A local private or public agency with proper legal status and governed by a board of directors that accepts funds from the Department to administer the Early Childhood Intervention (ECI) Program.

(29) [~~(24)~~] Public agency--The Department and any other political subdivision of the state that is responsible for providing early intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(30) [~~(25)~~] Public health clinic--Any clinic that provides pediatric physical examinations and receives public funding from federal, state, city, or county governments.

(31) [~~(26)~~] Qualified--A person who has met state approval or recognized certificate, license, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(32) [~~(27)~~] Referral date--The date the child's name and sufficient information to contact the family was obtained by the agency receiving funds for ECI services from the Department.

(33) [~~(28)~~] Service coordinator (case manager)--A staff person with a local ECI provider who is assigned to a child or family, who is the single contact point for families, and who is responsible for assisting and empowering families to receive the rights, procedural safeguards, and services authorized by these rules and Department policy and procedures. The service coordinator is from the profession most immediately related to the child's or family's needs. (The term profession includes service coordination.)

(34) [~~(29)~~] Services--Individualized intervention services, as determined by the interdisciplinary team and listed in the IFSP. Services are further defined in §108.25(5)(C) - (E) of this title (relating to Service Delivery Requirements).

(35) [~~(30)~~] Supplanting--The withdrawal of local, private, or other public funds for services which were available during the previous year of funding.

(36) [~~(31)~~] Surrogate parent--An individual appointed or assigned to take the place of a parent for the purposes of Chapter 73 of the Human Resources Code when no parent can be identified or located or when the child is under managing conservatorship of the state. A surrogate parent appointed under this chapter shall act to advocate for or represent the child, relating to the identification, evaluation, educational placement, and provision of the Individuals with Disabilities Education Act, Part C services.

(37) [~~(32)~~] Transportation services--Travel and other related costs that are necessary to enable a child or family to receive early intervention services.

(38) [~~(33)~~] UGMS--Uniform grant management standards adopted by the governor's Office of Budget and Planning in 1 TAC §§5.141 - 5.167 under the authority of Chapter 783, Government Code.

§108.27. Program Administration for Comprehensive Services.

(a) (No change.)

(b) Program requirements.

(1) - (4) (No change.)

(5) Staff composition and qualifications.

(A) - (C) (No change.)

(D) The following qualifications and responsibilities apply to early intervention specialist (EIS) [~~EIS~~] Professionals.

(i) - (iv) (No change.)

(v) Continuing professional education requirements. EIS Professionals must meet annual continuing professional education requirements to maintain their status. Continuing professional education consists of the planned individual learning experiences as described in the EIS Professional's annual Individual Professional Development Plan (IPDP), which shall include completion of a minimum of ten contact hours of approved continuing professional development education experiences. In addition, EIS Professionals must obtain three hours of training in ethics every two years.

(vi) (No change.)

(vii) Registry. The Department shall issue certificates of recognition to and maintain a registry of individuals who are enrolled in and successfully complete the requirements to be Fully Qualified EIS Professionals. Information and documentation in the EIS Registry is subject to the Public Information Act.

(viii) - (ix) (No change.)

(E) - (F) (No change.)

(6) - (16) (No change.)

§108.47. Early Intervention Specialist Code of Ethics.

An Early Intervention Specialist (EIS) must observe and comply with the following standards of conduct in the EIS code of ethics.

(1) EISs must know and comply with both their program's policies and the Department of Assistive and Rehabilitative Services (DARS) Division for Early Childhood Intervention Services Policy.

(2) EISs must operate only within the boundaries provided by their education, training and credentials.

(3) EISs must take measures to avoid imposing or inflicting harm.

(4) EISs must truthfully represent their services, professional credentials, and qualifications. EISs must inform families of the scope and limitations of their credentials.

(5) EISs must strive to maintain and improve their professional knowledge, skills, and abilities.

(6) EISs must maintain the confidentiality of families served by the ECI Program in accordance with DARS Division for Early Childhood Intervention Services Policy.

(7) EISs must establish professional boundaries and avoid establishing dual relationships or conflicts of interest with families. Any prior relationships with a family member must be reported to the EIS's supervisor immediately.

(8) Sexual or intimate relationships are prohibited between EIS and family members of children enrolled in the ECI program that employs the EIS and up to three years after the child "exits" the ECI program.

(9) Financial relationships between EIS and family members of children enrolled in the ECI program that employs the EIS are prohibited until the child "exits" the ECI program.

(10) EISs must not exploit their position of trust and influence with a family by benefiting from relationships established as an EIS.

(11) EISs must not provide direct service while impaired, including impairments that are due to the use of medication, illicit drugs, or alcohol.

(12) EISs must not falsify documentation.

(13) EISs must not refuse to provide services for which they are credentialed solely on the basis of a child's and/or family's gender, race, socioeconomic status, ethnicity, color, religion, national origin, disability, sexual orientation, or political affiliation.

(14) EISs must make reasonable efforts to ensure that families receive appropriate services when the EISs are unavailable or anticipate that they will no longer be employed with the ECI program.

(15) EISs have a professional obligation to report unethical behavior demonstrated by colleagues throughout the ECI system to their program director and to the appropriate board or state agency.

§108.48. Violations of the EIS Code of Ethics.

(a) An EIS who violates any of the standards outlined in §108.47 of this subchapter (relating to Early Intervention Specialist Code of Ethics), is subject to his or her employer's disciplinary procedures. Additionally, the EIS's employer must complete an EIS Code of Ethics Incident Report and send a copy to DARS Division for Early Childhood Intervention Services.

(b) The EIS Code of Ethics Incident Report is kept in the EIS's Registry file at DARS Division for Early Childhood Intervention Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 2, 2007.

TRD-200703371

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: September 16, 2007
For further information, please call: (512) 424-4050

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT

SUBCHAPTER D. TREATMENT PLANNING

28 TAC §137.300

The Texas Department of Insurance, Division of Workers' Compensation withdraws the emergency amendment to §137.300 which appeared in the April 20, 2007, issue of the *Texas Register* (32 TexReg 2225).

Filed with the Office of the Secretary of State on August 2, 2007.

TRD-200703377
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: August 2, 2007
For further information, please call: (512) 804-4715

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1003

The Health and Human Services Commission (HHSC) adopts amendments to §354.1003, Time Limits for Submitted Claims. The amended rule is adopted without changes to the proposed text published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2332) and will not be republished.

The Centers for Medicare & Medicaid Services (CMS) require that school districts, as public entities, not be paid in excess of their Medicaid-allowable costs incurred for providing school-based services, known in Texas as School Health and Related Services (SHARS). To comply with this CMS requirement and Texas' recently-approved Medicaid state plan language regarding the SHARS reimbursement methodology, HHSC is implementing annual SHARS cost reporting, cost reconciliation, and cost settlement processes beginning with state fiscal year (SFY) 2007.

The current rule allows SHARS claims to be submitted within 365 days from the date of service throughout the year. This schedule of claims submission does not allow sufficient time for HHSC to accurately complete cost reconciliation and cost settlement processes as required by CMS.

The amendment requires initial SHARS claims to be submitted within 365 days from the date of service or 95 days after the end of the state fiscal year, whichever comes first. Thus, for example, claims with dates of service during SFY 2007 would be due on or before December 4, 2007, allowing the vast majority of those claims to be processed through any appeals by September 1, 2008, when the cost reconciliation and cost settlement processes begin.

HHSC did not receive comments regarding the proposed rule during the 30-day comment period, which included a public hearing on May 17, 2007.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703386
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 26, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 9. AMBULANCE SERVICES

1 TAC §§354.1111, 354.1113, 354.1115

The Texas Health and Human Services Commission (HHSC or Commission) adopts amendments to §§354.1111, Definitions; 354.1113, Additional Claim Information Requirements; and 354.1115, Authorized Ambulance Services, in Title 1, Part 15, Chapter 355, Subchapter A, Division 9, Ambulance Services. Rule 354.1113 is adopted with changes to the proposed text published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2430) and will, therefore, be republished. The amendments to §354.1111 and §354.1115 are adopted without changes to the proposed text published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2430) and will not be republished.

Background and Purpose

The proposed amendments to §354.1111 reflect the reorganization of the Health and Human Services agencies pursuant to House Bill 2292, 78th Legislature, Regular Session, 2003. The amendment changes the definition of "emergency medical condition" to include psychiatric disturbances or symptoms of substance abuse and to track the definitions of "emergency medical condition" found in 42 Code of Federal Regulations §438.114(a) and §489.24(b). Other definitions are updated or removed from the rule as a result of revisions to the corresponding §354.1113, Additional Claim Information Requirements, and §354.1115, Authorized Ambulance Services.

The proposed amendments to §354.1113 specify what must be included to document medical necessity on ambulance claims, including the requirement that transport documentation substantiate the level of service and mode of transportation. The amendment also requires that a prior authorization number for non-

emergency services be obtained before an ambulance is used to transport a recipient. Additionally, the section clarifies the types of supporting documentation that the ambulance provider and requesting provider must maintain and make available if requested by the Office of the Inspector General or the Commission or its designee. Examples of supporting documentation were deleted from the rule and will be included instead in policy.

On adoption, a non-substantive, technical clarification was made to §354.1113(a)(5) to clarify that a prior authorization number (PAN) must be submitted with a claim only if required. Subsection (b) spells out the circumstances in which a PAN is required.

Section 354.1115, Authorized Ambulance Services, is amended to specifically reflect the requirements found in §32.024(t) of the Human Resources Code concerning prior authorization for non-emergency ambulance transportation. Physicians, nursing facilities, health care providers, or other responsible parties will be required to obtain authorization from the Commission or its designee before an ambulance can be used to transport a recipient in a non-emergency situation. The Commission has 48 hours to respond to the request once it is received. The rule also outlines the circumstances under which the Commission will grant immediate authorization for transport and the process an ambulance provider should follow to receive payment in cases in which the requesting provider did not receive a required prior authorization.

In addition to the amendments described above, non-substantive terminology changes are made throughout the Division, including replacing references to the Texas Department of Health with the Health and Human Services Commission.

Comments

The 30-day comment period ended June 3, 2007. During that period, HHSC held a public hearing on May 24, 2007, during which it received comments regarding one of the proposed rules. A summary of the comments and HHSC's response follows.

Comment: The Texas Ambulance Association, Texas Association of Air Medical Services, and Care Flite, North Central Texas, addressing language in §354.1113(c)(1), suggested deleting the words "or maintained" from the following sentence: "This supporting documentation is limited to documents developed or maintained by the ambulance provider." According to the commenters, this deletion makes clear that, while ambulance providers may maintain many documents, "supporting documentation" is limited to documents developed by the ambulance provider. The commenters stated that: "The intent of the new §354.1113(c) was to make it clear that an ambulance provider is not required to obtain or maintain sending or receiving hospital records, and if HHSC, OIG or the Medicaid contractor wanted to review hospital records during a post-payment audit of an ambulance claim, they would obtain this information directly from the hospitals." In addition, the first sentence of §354.1113(c) already directs providers to maintain supporting documentation, so the proposed language in §354.1113(c)(1) in effect tells an ambulance provider "to maintain that which it maintains."

HHSC Response: HHSC agrees with the comment and will delete the words "or maintained" from §354.1113(c)(1). This deletion eliminates the apparent duplication of the directive in §354.1113(c) to maintain supporting documentation and clarifies that an ambulance provider is required to maintain only supporting documentation developed by the ambulance provider. The deletion also reflects the intent of the rule: to ensure that the ambulance provider maintains sufficient documentation to support the medical necessity of the ambulance transport.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1113. Additional Claim Information Requirements.

(a) In addition to the general requirements in §354.1001 of this title (relating to Claim Information Requirements), the following information is required on claims for ambulance services:

(1) Documentation of medical necessity in accordance with codes representing medical conditions as designated by the Commission:

(A) The transport documentation must substantiate the level of service and mode of transport provided;

(B) Reimbursement is recouped when the documentation does not substantiate that the level of service and mode of transport provided accurately matches the level of service and mode of transport claimed; and

(C) The level of service and mode of transport provided must be medically necessary based on the clinical situation and needs of the recipient;

(2) Type of ambulance service provided (e.g, air, ground, or boat);

(3) Origin and destination of each separate trip;

(4) Charges for ambulance services, including base rates and mileage rates; and

(5) Prior authorization number (PAN), if required.

(b) Obtaining a prior authorization number.

(1) A PAN for non-emergency transports must be obtained before an ambulance is used to transport a recipient.

(2) A PAN for out-of-state ambulance transports must be obtained before an ambulance is used to transport a recipient.

(c) Supporting documentation is required to be maintained by both the ambulance provider and the requesting provider including a physician, nursing facility, health care provider or other responsible party. Supporting documentation is to be made available if requested by the Office of Inspector General (OIG) or the Commission or its designee.

(1) An ambulance provider is required to maintain documentation that represents the recipient's medical conditions and other clinical information to substantiate medical necessity and the level of service and mode of transportation requested. This supporting documentation is limited to documents developed by the ambulance provider.

(2) Physicians, nursing facilities, health care providers or other responsible parties are required to maintain physician orders related to requests for prior authorization of non-emergency and out-of-state ambulance services. These providers must also maintain documentation of medical necessity for the ambulance transport.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703387

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 26, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

16 TAC §25.173

The Public Utility Commission of Texas (commission or PUC) adopts an amendment to §25.173, relating to *Goal for Renewable Energy* with changes to the proposed text as published in the February 9, 2007, issue of the *Texas Register* (32 TexReg 487). The amendment will increase the state's renewable portfolio standard (RPS) and will establish a target of having at least 500 megawatts (MW) of capacity from a renewable energy technology other than a source using wind energy. Both changes are required by Senate Bill 20, 79th Legislature, 1st Called Session (2005), which amended Public Utility Regulatory Act (PURA) §39.904, relating to the *Goal for Renewable Energy*. This amendment is adopted under Project Number 33492.

The principal purpose of this amendment was to implement SB 20, which increased the RPS and added a 500 MW non-wind target. Other amendments were made to improve the renewable energy program under PURA §39.904, based on experience with the program and developments in the renewable energy field. While a number of parties expressed concern about the commission's proposal to adopt a compliance premium as an incentive for the development of non-wind renewable resources, there are several other amendments that would provide additional incentives for non-wind resources. In particular, the rule has been amended to permit fossil fuel generating facilities that are repowered to use a renewable fuel to earn renewable energy credits (RECs) and to permit small renewable resources to aggregate their energy for purposes of earning RECs. The commission believes that there is significant uncertainty about its authority to establish a separate RPS for non-wind renewable resources, but this rule should provide incentives for the development of non-wind renewable resources. If this expectation is not realized, the commission has the latitude to review the rule and amend it in the future.

A public hearing on the amendment was held at the commission offices on March 27, 2007, at 9:00 a.m. Representatives from AEP Southwestern Electric Power Company (SWEPCO); the City of Austin d/b/a/ Austin Energy (Austin Energy); the Electric Reliability Council of Texas (ERCOT); Good Company Associates; MeadWestvaco Corporation (MeadWestvaco); Nacogdoches Power, LLC; State Energy Conservation Office; Texas Industrial Energy Consumers (TIEC); and TXU Competitive Companies; and VRS Corporation attended the hearing. Nacogdoches Power, Austin Energy and TIEC provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendment and questions posed by the commission from Austin Energy; AES Corporation (AES); City Public Service of San Antonio (CPS); El Paso Electric Company (EPE); ERCOT; MeadWestvaco; Nacogdoches Power; Public Citizen Texas Office (Public Citizen); Reliant Energy, Incorporated (Reliant); SOAR Energy, LLC (SOAR); SWEPCO; TIEC; and TXU Cities Steering Committee (TXU Cities). Comments were also received from Senator Robert L. Nichols; Senator Todd Staples; Representative Wayne Christian; Representative John Zerwas, M.D.; Nacogdoches County Judge Joe English; and the Nacogdoches Economic Development Corporation. The commission received reply comments from Guadalupe-Blanco River Authority (GBRA); Maverick County Water Control and Improvement District No. 1 (Maverick County); MeadWestvaco; TIEC; and the Wind Coalition.

In addition to seeking comments on the proposed amendment, the commission posed three questions for comments.

(1) Subsection (e)(2) provides that in order for a facility that requires fossil fuel to be eligible to produce RECs, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis. Would it be appropriate to raise the percentage as high as 25%? What technologies should be able to take advantage of such an increased allowance in the use of fossil fuel? Are there negative consequences that would result from such an increase?

Austin Energy, MeadWestvaco, Reliant, SOAR, TIEC, and TXU Cities supported an increase in the cap of fossil fuel use for facilities that require the use of fossil fuel to be eligible to produce RECs.

Austin Energy stated that as part of its goal to procure 100 MW of solar resources by the year 2020, it issued and reviewed the responses to a request for proposal (RFP) for solar supply resources, and that some responses involved centralized solar installations which could be co-fired with natural gas-based resources. Austin Energy stated that it is clear from their review of the responses to their RFP that in some instances, solar resources could be provided more cheaply and with a higher capacity factor if co-fired with natural gas. Austin Energy did not see any negative consequences to allowing a solar or other renewable technology generating facility to be co-fired with a reasonable portion of natural gas and stated that the share of the energy produced from the renewable resource can and should be classified as renewable and awarded RECs, which would provide an additional potential stream of revenue for the developer and help the State to achieve the 500 MW target. Austin Energy stated that it believed that this option could reduce the costs of acquiring energy from a centralized solar station, which would expand the supply options.

MeadWestvaco strongly supported raising the percentage of fossil fuel input to as high as 25% to foster the development of non-wind renewable energy technologies; assist the commission in meeting the 500 MW non-wind target; recognize the particular needs of industrial facilities; and match federal policy on the use of fossil fuels in biomass facilities. MeadWestvaco commented

that the type of facility that it is considering developing will be connected to an industrial process where the facility will be integrated into the mill power plant complex to supply as-needed energy to the plant. MeadWestvaco explained that the industrial process of producing paper imposes certain requirements that cannot be satisfied with only 2% annual average fossil fuel input on a heat-input basis. According to MeadWestvaco, natural gas or fuel oil would need to be burned continuously in very small amounts in an otherwise all solid fuel-fired boiler in order to achieve fast load response and to maintain steam-header pressure. Additionally, MeadWestvaco commented that in an industrial complex, steam-header pressure must be maintained even when there are solid fuel handling problems at the facility, such a malfunction in a conveyor belt, because the paper machine's demand does not drop during the conditions, and the boiler must immediately make up the difference.

MeadWestvaco commented that under the Public Utilities Regulatory Policies Act and Federal Energy Regulatory Commission rules, "a biomass facility is considered to be a 'small power production facility' even though it uses fossil fuels if (i) its use of fossil fuels are for authorized purposes and (ii) its use of fossil fuels does not, in the aggregate, exceed 25% of the total energy input of the facility during any relevant 12-month period." MeadWestvaco stated that it would be appropriate for the commission to adopt similar standards, which would provide incentives for the development of additional renewable-fueled cogeneration facilities, and would be consistent with PURA §35.061, relating to *Encouragement of Economical Production*, which directs the commission to encourage the economical production of electric energy by qualifying facilities. MeadWestvaco commented that the commission may have a concern over the use of a limited amount of fossil fuels by eligible facilities in the production of renewable energy, and recommended that RECs should only be awarded for the portion of the facility that uses renewable fuels. MeadWestvaco stated that without an increase in the amount of fossil fuel that an eligible facility can consume, its ability to benefit from the REC program would be substantially impaired.

Reliant supported eliminating specific limitations on how much fossil fuel can be used in a generation facility in order to qualify to produce RECs, and stated that a better approach would be to allow generators to count any percentage of the production that is renewable for the purposes of producing RECs. Reliant stated that this should benefit both existing non-wind renewable technologies that rely in part on fossil fuels, and renewable energy technologies that may not be ready for commercial use today, but will be available in the future. Reliant added that it would increase the facilities that could participate in the program, increasing market liquidity and facilitating new market entry. Reliant did not anticipate any potential negative consequences from such a change. Reliant proposed deleting subsection (e)(2), consistent with its comments.

SOAR supported an increase in the fossil fuel input total to 25%. SOAR stated that the start up of its plant would entail bringing the turbine to optimal performance, and then switching it to biofuel. Although SOAR does not intend to use more than 2.0%, it stated that a future blending technology may arise in which a larger blend of natural gas and biofuel would be optimal in the firing of the turbine. SOAR also stated that any limitation may be restrictive to achieving greater operational efficiencies that may lower the heat rate of a plant.

TIEC supported an increase and stated that it could significantly increase the development of additional non-wind renewable energy technologies and provide a means to achieve the 500 MW non-wind target without the need of additional subsidies, and a means that does not result in an improper increase to the RPS requirement. TIEC commented that certain non-wind technologies require the use of fossil fuel for startup and flame stabilization, and technologies that require a minimal amount of fossil fuel for these purposes should not be precluded from participating in the REC program. TIEC recommended that the rule be neutral with respect to the type of facility than can use a minimal amount of fossil fuel and still qualify as renewable.

TXU Cities commented that it would be appropriate to maintain as much flexibility as possible in the definition of resources eligible to produce RECs, and one way to enhance such flexibility would be to increase the cap on fossil fuel co-firing in the proposed rule. Therefore, TXU Cities supported raising the fossil fuel co-firing cap to 25% to the extent that it can be shown to lower the overall costs and increase the reliability of renewable resources and to the extent the fossil fuel portion is not reflected in the renewable energy base used to set the capacity conversion factor (CCF) and annual RPS for renewable energy. TXU Cities saw no significant negative consequences in increasing the cap and stated that there were clearly benefits in the form of providing additional flexibility in the design of such facilities as well as increasing the reliability and output capability of renewable generation projects.

In reply comments, MeadWestvaco disagreed with the assertion of TXU Cities that the increase should only be allowed if it can be shown to lower the overall cost and increase the reliability of renewable resources. MeadWestvaco stated that such an approach is too narrow and ignores the benefits that can be achieved through the use of fossil fuels by industrial biomass cogeneration.

In reply comments, TIEC suggested that the commission take particular note of the numerous comments that supported increasing the amount of fossil fuel that can be utilized by an eligible facility and that support the notion that there are a variety of non-wind renewable energy technologies that could be developed through a simple change to the current rule. TIEC commented that the 2.0% limitation appears to be the largest barrier to entry that non-wind technologies face, and that raising the limit could result in substantial development of concentrated solar, wood-waste biomass, fuel-source conversion, and other types of non-wind renewable energy technologies which could make an impact towards the 500 MW non-wind target without additional cost to the market or consumers. TIEC stated that this type of market-based solution should be the commission's first step in encouraging the development of non-wind renewable energy resources.

CPS Energy stated that this issue is difficult, and pointed out that an increase to 25% would serve to assist primarily biomass and biomass waste projects, which offer better dispatchability to meet load, but such an increase would fail to capitalize fully on the State's abundant solar potential.

Nacogdoches Power commented that potential changes to the REC eligibility standard for fossil fuel use implicate complex environmental and economic issues, such as potential increases in overall fossil fuel utilization, and recommended that such issues be dealt with in a separate rulemaking process.

Public Citizen commented that it would not oppose raising the percentage as long as there were pollution control requirements in place, such as requiring the facilities to include pollution con-

trols that produce emission rates as low as those that would occur from using the Best Available Control Technology. Without such controls, negative impacts could result, such as RECs going towards generating sources that emit large amount of pollution, contrary to the purpose of RECs to promote clean, renewable energy generation. Public Citizen stated that concentrated solar energy combined with natural gas is an example of a technology that would benefit from raising the percentage, as the natural gas can provide energy when solar energy is not available.

In reply comments, MeadWestvaco disagreed with Public Citizen's suggestion that the commission should impose specific pollution control requirements if the limit on the use of fossil fuel is increased. MeadWestvaco stated that such regulation is beyond the scope of this rulemaking, and would require legislative direction. Additionally, only the portion of the capacity produced by renewable energy would be eligible to receive RECs, and therefore, no RECs would be awarded for the portion of the capacity that uses fossil fuel.

Commission response

The commission appreciates the comments of Austin Energy, MeadWestvaco, Reliant, SOAR, TIEC, and TXU Cities, and understands there is merit in the concept that a change to the allowed use of fossil fuel could benefit the development of renewable energy technologies, particularly that of non-wind technologies. Based on the comments of these parties, it is apparent that there are renewable technologies that may not be able to develop or operate efficiently without using a greater input of fossil fuel than the currently permitted 2% of the total annual fuel input on a British thermal unit or equivalent basis. As MeadWestvaco points out, this latitude is particularly important for renewable cogeneration technology that is a part of an industrial facility. The commission acknowledges that the definition of renewable energy technology in PURA §39.904(d) specifies that a renewable energy technology "exclusively relies" on an energy source that is naturally regenerated from permitted sources. However, it was previously determined that the 2% level of allowed input was necessary in order to allow certain facilities to operate and earn RECs, and that this level of input was within the intent of the statute. As the commission strives to encourage the development of additional renewable energy technology in this state, particularly technologies other than wind, it finds that an increase in the allowed amount of fossil fuel is justified.

In order to remain consistent with the requirement that the RECs be generated based on technology that exclusively relies on energy sources that do not include fossil fuels, it has been and remains necessary for any industry-standard thermal resource that relies in part on fossil fuel, that the generation from the fossil fuels not earn RECs. This requirement appears in subsection (e)(6). The commission is amending subsection (e)(2) of the rule to permit the use of fossil fuel up to 25% total annual fuel input and adds new subsection (e)(3) that specifies that for facilities using more than 2% total annual fuel input, only the portion of the capacity produced by a renewable source is eligible to receive RECs. This change will make it clear that any technology that relies on more than 2% of fossil fuel may not earn RECs from the fossil fuel output. In order to ensure that RECs earned by technologies utilizing the increased fossil fuel allowance are granted exclusively for the generation produced by the renewable source, subsection (e)(3) requires these facilities to have a separate meter to measure the amount of fossil fuel input which is to be subtracted from the total megawatt hours of generation reported to the program administrator for the award of RECs, and adds requirements regarding the reporting and auditing of this information.

(2) This proposal contemplates that RECs and compliance premiums will have the same life-span of three years. Would the value of the compliance premiums be increased or decreased if the rule established a longer life-span for compliance premiums? Would a different life-span for compliance premiums be appropriate?

Public Citizen stated that extending the life-span for compliance premiums to 10 years would improve the value for solar energy projects. However, Public Citizen commented that the compliance premium approach would not create sufficient economic value to customers, and therefore such an approach would not be successful at helping to create a non-wind renewable energy market.

Nacogdoches Power commented that the value of compliance premiums would be increased if their lifespan was increased beyond three years due to the option value of being able to retain the premiums and use or sell them during periods of higher value RECs. Nacogdoches Power stated that in the past, it had proposed a 10 year life-span for non-wind RECs and compliance premiums because a portion of new renewable generation will consist of baseload biomass generation. The baseload generation will require an increase in the CCF in order for the market to reflect the high capacity factor of this type of generation and adjust the number of RECs that are attributable to the installed renewable capacity. However, Nacogdoches Power stated that as subsection (j) provides that the CCF will only be reset every other year and only after 12 months of operating data, a renewable resource that begins operation in January 2009, will not have its performance data reflected in the CCF until the forth quarter of 2011. Nacogdoches Power commented that extending the life-span of RECs and compliance premiums is one way to compensate for this timing problem.

CPS Energy stated that the REC market was meant originally to cover all forms of renewables and no additional changes or provisions to the RECs should be necessary for the additional 500 MW.

Reliant commented that a compliance premium should have the same life-span as a REC, that the rule is intended to allow the compliance premiums to be used in the same manner as RECs, and that it would be administratively easier for them to have the same characteristics. They stated that an additional reason for this is technological neutrality. Reliant also stated that the economic benefit to non-wind generators of the compliance premiums having a longer life-span than RECs would accrue only if the market were in an oversupply situation for non-wind RECs, which is not likely to occur.

TIEC stated that to the extent the commission decides to adopt compliance premiums, the life-span should be the same as traditional RECs, and the compliance premiums awarded to non-wind renewable energy technologies should match the characteristics of RECs awarded to other renewable technologies as closely as possible.

TXU Cities recommended that the life-span for RECs and compliance premiums be maintained at three years, and stated that increasing the life-span would likely increase the value and cost of compliance premiums by providing greater flexibility as to when to exercise such premiums, which could increase costs to end-use customers.

Commission response

The commission agrees with Reliant, TIEC and TXU Cities that the life-span of compliance premiums should be three years, equal to that of RECs because the compliance premiums are intended to essentially serve as bonus RECs and as such should have essentially the same characteristics. The commission also agrees with Reliant that it will be administratively easier for compliance premiums to have the same characteristics as RECs. Therefore, the commission retains the language as proposed.

(3) Proposed subsection (l)(1) provides that eligible non-wind renewable technologies that have no air emissions will be awarded two compliance premiums rather than the one compliance premium awarded to other technologies. Is it appropriate for this rule to make this distinction among renewable technologies?

CPS Energy stated that the advantage of allowing additional compliance premiums would be to encourage the use of solar, wave/tidal and possibly geothermal technologies rather than biomass-based projects. CPS commented that it is appropriate to make the distinction if the end result is to foster the development of renewables other than wind and biomass.

SOAR supported awarding two compliance premiums to plants that have no air emissions, and stated that these plants are more costly to build and require greater economic reward to encourage development and cleaner air for Texas.

Public Citizen commented that renewable energy technologies should not be awarded two compliance premiums because it would dilute the value of RECs and therefore damage the REC and renewable energy markets.

Nacogdoches Power commented that differentiated compliance premiums are generally within the commission's plenary powers, but would not alone effect compliance with the expressly "volumetric" directives of the legislature. Nacogdoches Power recommended the commission revise the proposed rule to clarify that the RPS obligations include the purchase of the energy equivalent of at least 500 MW of non-wind renewable resources. They commented that the controlling factor in this matter should be the legislative intent of the 2005 Senate Bill 20 amendments to PURA §39.904. Nacogdoches Power stated that as a general matter, PURA §14.001 relating to *Power to Regulate and Supervise*, provides the commission "the general power to regulate and supervise the business of each public utility" and §14.002, relating to *Rules*, further provides the authority to "adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction." Nacogdoches Power added that Texas Courts have similarly confirmed this general regulatory authority, cited Public Util. Comm'n of Texas et al. v. Southwestern Bell Tel. Co. 980 S.W.2nd 116, 119 (Tex. App. 1997), and stated that such delegation is not open-ended a should be implemented in a manner that effectuates the will of the Legislature. Nacogdoches Power stated that in this regard, the critical point is that the Legislature established directives in "expressly volumetric terms," specifying the installed volume of at least 500 MW of non-wind renewable capacity in §39.904(a); allowing the commission in §39.904(b) to establish a program for REPs to purchase sufficient RECs to satisfy renewable requirements and in §39.904(c)(1) which Nacogdoches Power commented directs the commission to adopt rules that "establish the minimum annual renewable energy requirement for each retail energy provider . . . in a manner reasonably calculated by the commission to produce, on a statewide basis, compliance with the requirement prescribed in Subsection (a)." Nacogdoches Power reported that the requirement of subsection (a) expressly includes the minimum volume of 500 MW of non-wind resources. Nacogdoches Power stated that while the ability to order differentiated compliance premiums would generally fall within the commission's plenary regulatory powers, in this instance, the provisions would not in themselves comply with the express directive of the Legislature that the commission adopt rules that are reasonably calculated to produce compliance with the specific "volumetric" requirements of the statute. They added that the problem is that there is no assurance that the resulting compliance premiums would provide revenues sufficient to incentivize or support any investment in non-wind resources.

Nacogdoches Power continued its comments, stating that in a well-functioning and non-differentiated REC market, a single market clearing price will generally be set by the last unit needed to fulfill the purchase amount, and will thus reflect only the incremental REC revenues required by such marginal unit, and not the revenues required by units that did not clear in the market. In the current market, and foreseeable market, that marginal unit will tend to be a wind project, whose costs are less than non-wind renewable resources, and requires less supplemental revenue from the REC market in order to be financially viable. Therefore, under the current proposal, the RPS revenue available to non-wind resources will be a multiple of the REC clearing price that is set by a wind project, which does not relate to the level of revenue required by non-wind resources. Nacogdoches Power recommended language regarding annual non-wind REC requirements to be added to subsection (h)(1), in accordance with their comments; stated that its proposed revision and clarification would be consistent with "best practices" adopted by numerous other jurisdictions where the policy objective for particular or diversified types of renewable resources is "volumetric" in nature; and cited studies discussing the separate requirement and tier approaches of some RPS programs.

In reply comments, MeadWestvaco strongly disagreed with Nacogdoches Power's suggestion that the commission should clarify "that the RPS obligations include the purchase of the energy equivalent of at least 500 MW of non-wind renewable resources." MeadWestvaco stated that this appears to create a requirement that the renewable energy eligible for RECs be sold, which is contrary to PURA §39.904(a), which provides that the goal for renewable energy counts renewable generating capacity that is installed. MeadWestvaco commented that requiring the purchase of the equivalent of the 500 MW of non-wind resources would deviate from the structure of the entire existing RPS program and would unfairly discriminate against those new facilities that self-generate and consume on-site without the sale of the renewable electricity produced.

TIEC commented that it opposed distinctions that would favor one technology over another in ways not contemplated by PURA.

TXU Cities did not favor the creation of "artificial or arbitrary incentives" for non-wind renewable technologies. TXU Cities stated the proposed provision of awarding additional compliance premiums would simply increase the statewide RPS requirement and therefore increase costs that will be passed on to end-use customer for what may "prove to be insignificant improvements in air emissions of non-wind renewable technologies." TXU Cities recommended leaving the development of such technologies to market forces and customer choice.

Commission response

The commission does not find it appropriate at this time to give preference to plants that have no air emissions and therefore concludes that all non-wind technology should receive the same number of compliance premiums. The Legislature has not provided the commission a sufficiently clear legal or policy directive to establish additional benefits for non-polluting renewable energy technologies.

The commission declines to amend the rule to require the RPS obligations to include non-wind requirements as proposed by Nacogdoches Power. The commission previously sought comments regarding an RPS requirement to meet the 500 MW non-wind target and issued the proposed rule without such a requirement, as the commission questioned whether it had the authority to require such purchases. The commission notes that during the 80th Legislative Session in 2007, bills were filed that would have given the commission the authority to require the purchase of non-wind RECs; however, these bills were not passed.

Section 25.173

Subsection (a)

EPE commented that the distinction between target and goal as it pertains to the 500 MW of non-wind renewable resources is somewhat obfuscated, and that same language used with regard to the 10,000 MW target should have been used with respect to the 500 MW target. EPE proposed language consistent with this comment.

SWEPCO commented that proposed subsection (a)(1) creates confusion whether the 500 MW of total generation from non-wind renewable resources to be installed after September 1, 2005, is intended as a goal. In similar comments, TIEC stated that as currently drafted, §25.173(a)(1) appears to make the 500 MW non-wind target mandatory, as it provides for "at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy . . . " TIEC commented that this language implies that 500 MW of the total installed capacity must be from non-wind resources, which is contrary to PURA §39.904, which provides that the commission only establish a target. TIEC requested that "a target of" be added prior to "at least".

MeadWestvaco supported the commission's determination that the 500 MW target is voluntary and is not a mandatory obligation, and noted that there could be unintended consequences if the target were mandatory. As an example, MeadWestvaco commented that there could be a significant increase in the cost of raw materials that MeadWestvaco needs for its core paper production business if there were a sudden increase in the number of biomass facilities.

Commission response

It appears that words "a target of" were inadvertently omitted from this subsection as proposed. The commission agrees that this omission causes confusion and clarifies the language.

Subsection (c)

Austin Energy commented that §25.173(c)(6), *Definitions, Microgenerator*, defines a microgenerator as "a customer who owns one or more eligible renewable energy generating units with a rated capacity of 10 kW or less operating on the customer's side of the utility meter" and provides in subsection (p) that a REC aggregator "may manage the participation of multiple microgenerators in the REC trading program." Austin Energy stated that the 10 kW cutoff is "unworkably restrictive," and could erect a barrier to the expansion of small solar systems. Austin Energy noted that an 11 kW solar array is approximately three times the size of a typical residential project under its solar rebate program. Austin Energy stated that it is currently aggregating behind-the-meter solar facilities as large as 20 kW, and that the City of Austin's new convention center will have a solar array of 750 kW. Austin Energy added that it hopes that as the city pursues the goals in the Austin Climate Protection Plan systems as large as 500 MW will be installed on many buildings owned by the city and that the solar rebate program can be extended to provide sufficient incentives to locate larger solar arrays on commercial rooftops throughout the city. Austin Energy stated its belief that as long as the microgenerator operates on the customer's side of the meter on a residential or commercial building, the size limitation should be extended to at least one MW.

Commission response

The commission agrees that it is appropriate to raise the cap on capacity for a microgenerator to allow additional facilities to be included within aggregations. While the commission does not find the process necessary to report and be awarded RECs to be overly burdensome, it acknowledges that this could be a deterrent to participation for smaller facilities that are currently active or may be built. Therefore, the commission amends the rule to allow facilities under one MW to be designated microgenerators. The commission finds that facilities larger than one MW can reasonably be expected to have the necessary resources and be able to report and be awarded RECs.

Austin Energy commented that subsection (c)(19), *Definitions, Retail entity*, could unintentionally suggest that municipally owned utilities are subject to the RPS. Austin Energy suggested a minor modification to the language to clarify the phrase. ERCOT also offered language for this purpose.

Commission response

The commission agrees that the proposed wording is confusing and modifies the language as requested.

Nacogdoches Power commented that it is unclear why the proposed amendment of subsection (c)(21), *Definitions, Small producer*, which changes the definition of a "small producer" from two megawatts to ten megawatts is necessary. It commented that this would award RECs for a class of facilities not currently eligible for RECs, and therefore additional RECs would be created without the installation of any additional generation, thereby reducing the amount of new renewable generation required to achieve the statutorily established limits in SB 20. Nacogdoches Power recommended that this amendment be eliminated.

SOAR requested that this definition be modified to allow a small producer to include resources less that 150 MW, in order to include plants of a size that it intends to operate in the proposed modification.

In reply comments, Maverick County opposed the recommendations of Nacogdoches Power and SOAR. Maverick County explained that it is a governmental agency and body politic that operates a water control and improvement district in Eagle Pass. Maverick County stated that it purchased three small hydroelectric generating units which were at one time owned by Central Power and Light Company, and are interconnected to ERCOT at transmission voltage. Maverick County sells the output to a municipally owned utility in ERCOT. Maverick County commented that small renewable generators are only "marginally economic," particularly those that are hydroelectric which

were installed years ago, and are dependent on the river to generate electricity. Maverick County stated that its units were originally installed in 1932 and do not operate during low-water periods. Maverick County also stated that an increase in the cutoff point would enable small hydroelectric generators to earn RECs and assist in maintaining their economic viability, which will help ensure they remain in operation and encourage diversity of renewable energy technologies in Texas. Additionally, Maverick County stated, setting the ceiling at 10 MW would make the definition in this rule consistent with the definition of "on-site distributed generation" under P.U.C. Substantive Rule §25.211(c)(10), which addresses small generation units interconnected at the distribution level. Maverick County commented that this change would eliminate the discrepancy and assure that small distributed generation and small renewable units are treated in a similar fashion, whether they are interconnected at transmission voltage or distribution voltage. Maverick County noted that 13 small hydroelectric generators with a total nameplate capacity of less than 50 MW would be affected by the proposed change to the definition of "small producer."

Maverick County stated that the recommendations of Nacogdoches Power and SOAR should be rejected as they would perpetuate the discrepancy between the definitions of small producer and on-site distributed generation without any rational basis. Maverick County commented that Nacogdoches Power's claim that the proposed change would reduce the amount of new renewable generation required to achieve the statutory goals is incorrect, and the goal for new generation set forth in the statute would be unaffected by the proposed change. Maverick County stated that the increase in the cutoff point to 10 MW may allow some hydroelectric generating facilities to remain in business that would otherwise terminate operations.

In reply comments, GBRA supported the change of small producer from two MW to 10 MW as published and stated that it "further supports and adopts" the comments of Maverick County.

Commission response

The commission disagrees with Nacogdoches Power that the proposed increase in the capacity of a small producer from two MW to 10 MW should not be adopted. The commission agrees with Maverick County that the change to 10 MW will make this rule consistent with P.U.C. Substantive Rule §25.211(c)(10). The commission notes that in Project Number 20944, in which the commission set the two MW cap, the commission concluded that the offset methodology in the rule would benefit facilities existing in 1999 with a capacity of more than two MW. However, as confirmed by the comments of Maverick and GBRA, there are facilities with capacities over two MW, but under 10 MW, that need incentives such as RECs in order to remain in business. PURA §39.904(a) establishes the goal for renewable energy to be met by 2015 in two parts, 5000 MW of new renewable resources and 5880 of total renewable resources. The comments of Maverick County suggest that insufficient incentives for existing resources could result in loss of some existing resources. Thus, it is reasonable to increase the small producer cap to 10 MW to provide additional incentives for these existing renewable resources.

The commission disagrees with SOAR that the definition should be modified to allow a small producer to include resources less than 150 MW. The commission does not consider facilities this size to be small producers and, and finds 10 MW to be the appropriate cut-off for small producers as it is consistent with P.U.C. Substantive Rule §25.211(c)(10).

The commission leaves the definition of small producer as proposed.

Subsection (e)

Reliant commented that the commission could promote the development of non-wind technologies by modifying the rules to allow for methane that is produced from animal waste and other organic waste to be converted from BTUs into RECs at the source of the methane. Reliant stated that given the amount of cattle ranching and chicken farms in Texas, there is a potential to create renewable energy fuel through anaerobic digester technology, but there are administrative difficulties in tracking the methane produced at the source to the production of energy in an electric generator. Reliant proposed language consistent with this recommendation.

Commission response

The purpose of this rule is to encourage the output and use of renewable energy; therefore, the commission does not agree that the suggested change is appropriate in this rule. Measuring the production of RECs in any manner other than the output of electric energy is questionable. The statute includes provisions in §39.904(e) and (f) for awarding RECs for a specific set of land-fill gas projects by measuring the energy value of the gas, and the inclusion of authority to award RECs in this limited circumstance implies that the commission does not have the authority to do so in other circumstances. Additionally, the commission expects that similar claims could be made of other technologies and a thorough investigation of the possibilities, the advantages, and disadvantages would be necessary prior to making a policy decision that is such a significant departure from the current rule.

MeadWestvaco recommended that subsection (e) be revised to provide that a facility eligible for producing RECs is one that uses verifiable, sustainable biomass. MeadWestvaco stated its belief that only those facilities that use sustainable forestry measures and have industry certification should be eligible to earn RECs under the rule, and that the use of sustainable measures supports the long-term viability of the resources so that the resources are available for future generations. MeadWestvaco commented that other states have recognized the importance of adopting sustainability standards, such as Delaware, and the forest industry has created the Sustainable Forestry Initiative, Inc., which is a program with "rigorous" standards which a facility must meet in order to receive sustainability certification. MeadWestvaco proposed new subsection (e)(6) with language consistent with its comments.

Commission response

The commission declines to change the rule as requested by MeadWestvaco. It is outside the scope of this rulemaking to add additional requirements for a source to meet that were not set forth in the proposal for publication. Additionally, PURA does not require such restrictions on eligibility and the commission would need an extended period of time to evaluate the appropriateness of such a provision.

Subsection (f)

SOAR, Reliant and TIEC recommended that subsection (f)(3) be deleted. As currently proposed, this subsection falls under the facilities not eligible for producing RECs, and provides that "(a) fossil fueled generating plant that is repowered to use a renewable fuel, unless the plant is a small producer" is not eligible to earn RECs. Reliant saw no compelling policy reason to limit participation of re-powered facilities to those that are less that 10

MW in size, and stated that the state should encourage renewable energy to participate in the program regardless of size.

Commission response

The commission agrees with SOAR, Reliant and TIEC that subsection (f)(3) should be deleted and that it is appropriate to allow a facility that was previously a fossil fueled generating plant that has been repowered to use a renewable fuel, to be eligible for RECs provided that it meets the other provisions of the rule. However, the commission finds that it is appropriate to cap the amount of capacity allowed to produce RECs through this mechanism in order to encourage diversity in types of renewable resources and facilities, and amends subsection (e) accordingly. Additionally, the commission notes that the definition of "repowering" in subsection (c)(18) causes confusion, and that the term is not being used consistent with its definition in this rule. The commission modifies the term to "repower" and modifies its definition for clarification and consistency.

The commission acknowledges that allowing facilities that have been repowered to use renewable fuel to produce RECs is a change from the original policy decision made in Project Number 20944. The commission finds that this policy change is appropriate for the following reasons: the climate for renewable energy in Texas has changed since 1999; a sufficient number of new facilities have come on line; there has been sufficient time for new technologies to come on line; wind power is by far the greatest participating technology in the trading program; there is increased emphasis in adding non-wind renewable sources to the grid and trading program; there is increased emphasis on diversifying sources of energy in Texas; and repowering such facilities to use renewable power could be an economically efficient way to add non-wind renewable power to the grid. The commission notes that in light of the fact that the price for renewable energy credits is set by wind resources, providing non-wind technologies additional options in finding potentially economical ways to develop and operate is one way to encourage development of non-wind technologies.

TIEC also recommended that subsection (f)(4) be deleted. TIEC commented that renewable demonstration facilities should be eligible to participate in the REC trading program, that there is no reason to penalize these facilities and that such projects should be encouraged. TIEC further stated that the purpose of the statute is to encourage the development of all renewable energy technologies and to count all renewable capacity toward the goal, and that the proposed language and some of the language in the current rule is in violation of PURA §39.904(m) which requires that all renewable energy be counted toward the goal.

Commission response

The commission concludes that renewable demonstration facilities should be eligible to participate in the REC trading program so long as they meet all of the applicable requirements, and therefore deletes proposed subsection (f)(4).

Subsection (h)

Nacogdoches Power recommended language regarding annual non-wind REC requirements to be added to subsection (h)(1) consistent with its comments regarding question three.

In reply comments, MeadWestvaco disagreed that the commission should implement an RPS that utilizes separate tiers or classes for wind and non-wind renewable generation, and stated that there are no "volumetric terms" contained in Senate Bill 20 that require the overall RPS requirement to include a minimum of 500 MW of non-wind renewable energy. PURA §39.904 provides a 500 MW target. MeadWestvaco urged the commission to reject Nacogdoches' proposed revision to subsection (h)(1) and instead adopt the proposals of TIEC, EPE and SWEPCO, and revise subsection (a)(1) to clarify that the 500 MW non-wind target is not mandatory.

Commission response

Consistent with the commission's response to this recommendation in Question Three, the commission declines to change subsection (h)(1) as requested by Nacogdoches Power.

SWEPCO commented that subsection (h)(1), in addition to (a)(1) and (l), is proposed to be amended to address the calculated renewable energy capacity as a requirement and not a target, and that consequently, confusion may arise as to how to treat compliance premiums awarded from non-wind renewable energy and the effect of the calculation on the RPS requirement. SWEPCO stated its belief that market participants would benefit from the commission's clarification of its intended treatment of the 500 MW from non-wind renewable energy, whether as a goal or a target.

Commission response

The proposed change of "renewable energy capacity targets" to "renewable energy capacity requirements" is intended to alleviate confusion between target and requirement. Subsection (h)(1) outlines the breakdown of the additional renewable capacity required by the PURA §39.904, which is different than the target for non-wind set by the statute. Therefore, the commission declines to change the wording of this paragraph as suggested by SWEPCO. However, the commission is changing subsection (a)(1), as previously discussed, which should help alleviate the confusion identified by SWEPCO.

TIEC commented that §25.173(h)(1)(J) should be deleted, and that it inappropriately includes an additional 5,000 MW of renewable energy in the RPS for each year after 2014. TIEC stated that it is possible that the language is an attempt to capture the language regarding the 10,000 MW target in PURA §39.904(a), however, the language turns target into a mandate, which is a clear violation of the plain language of the statute. TIEC commented that the mandated RPS should expire once the required amount is met, and should not be increased after the 5,880 MW is fulfilled. Additionally, as currently drafted, the language could be interpreted to mean that an additional 5,000 MW should be added each year after 2014, which was not the Legislature's intent.

Commission response

The structure of the capacity requirements in subsection (h)(1) has not changed from the original rule. The count of renewable capacity required for each year is reflected as "MW of new resources" even in the years in which it remains consistent with the requirement from the year before and is only meant to communicate that it is an increase over the original 880 MW, not an increase from the year before. The commission does not see a need to change this structure. The commission notes that the 5,000 MW of new resources after 2014 is simply to indicate that the RPS continues at the same level as 2014. Part of the incentives provided under the application of the statute that the commission has adopted is the ability for a renewable energy resource to earn RECs for a ten-year period. Terminating the requirement to retire RECs after 2015 would eliminate this incentive for resources that come into service just before 2015.

Moreover, the commission does not believe that it has the authority to terminate the RPS once the requirement is met.

Subsection (i)

SWEPCO supported the change to subsection (i)(5) regarding a REC offset ceasing to be effective if the power purchase agreement on which it was based is no longer in effect. SWEPCO stated that this change properly focuses on the term of the power purchase agreement nominated at the commencement of the REC offset program, and recognizes that the utility, municipally-owned utility or cooperative that originally nominated that agreement can transfer it to its successors in interest without disqualifying the REC offsets associated with that agreement. SWEPCO, AEP Texas North Company and AEP Texas Central Company (AEP Companies) explained that they continue to hold the same 74.6 MW Southwest Mesa wind power project purchase agreement that they nominated at the commencement of the REC offset program, and will soon transfer their interests to their power marketing affiliate, AEP Energy Partners, as part of their business separation plans. AEP Companies stated that the power purchase agreement will continue to generate REC offsets throughout the remainder of its term, which expires on August 2, 2019. SWEPCO proposed amending subsection (i)(4)(A) to include a reference to successors in interest which SWEPCO proposed to be consistent with subsection (i)(5).

Commission response

The commission agrees that as drafted, subsections (i)(4)(A) and (i)(5) are inconsistent with each other in regard to whether REC offsets may be transferred to successors in interest. Therefore, subsection (i)(4)(A) is amended to include a reference to successors in interest.

Subsection (j)

TIEC commented that subsection (j)(4) should be revised to use actual generator performance using actual metered data, which includes the effects of transmission constraints and other real-world operational limitations. TIEC stated that although the proposed rule excludes the use of test data for periods prior to commercial operation, the term "valid performance data" opens the door to the inclusion of estimates or studies as opposed to real-world, performance data, and inclusion of information other than actual performance data could distort the calculation of the CCF. TIEC noted that distortions could have significant consequences because RECs are awarded based on "actual MWh produced," and it would be unfair to consumers to base the REC requirement on estimates that do not take into account congestion or other real limitations and require consumers to "suffer the increased REC costs that would result from those limitations." Additionally, TIEC stated, including estimates could result in arguments about what a generator "could have produced" which would open the door to a host of gaming opportunities. TIEC further commented that subsections (j)(1) & (2) appear to conflict in that paragraph (1) provides that the CCF must be based on actual generator performance data for the previous two years while paragraph (2) provides that the CCF must be based on all renewable resources in the program for which 12 months of data are available. TIEC recommended that the data acquired from the subsections should be from the same time period and the rule should be clear that actual generator performance will be used, which is measured by actual metered output.

In reply comments, the Wind Coalition stated that in contrast to TIEC, it agreed with the commission in the use of an appropriate modification to eliminate the error-inducing impact of start-up or test energy at renewable energy facilities. The Wind Coalition stated that the current CCF of 27.9% being used by the Texas REC Program Administrator is suspected of being flawed and should be scrutinized for accuracy. In particular, treatment of startup energy from new wind projects is thought to lead to a significant degree of underprediction of the CCF, perhaps by more than 20%, based on 2006 wind production data and the likelihood that Southwest Power Pool wind projects and biomass facilities in the Texas REC program will embody higher capacity factors than the ERCOT wind average. The Wind Coalition commented that the term "valid data" should be defined, as it has led to stakeholder disputes in the past, and stated that utilization of historical data that includes resources with periods of curtailments will generally underpredict the CCF.

Commission response

The commission agrees with TIEC that subsections (j)(1) and (j)(2) are confusing as proposed. As proposed, subsection (j)(1) was intended to limit the data used in the capacity conversion factor to two years of data for each resource, while subsection (j)(2) reflected a renumbered existing requirement that a resource must have been in the program for at least 12 months to be included in the calculation. However, the wording as published was confusing, and it was not clear whether a resource had to be in the program for 12 months or 24 months for its data to be used in the calculation. The commission amends subsection (j) to clarify its intent that two years of data will be used in calculating the capacity conversion factor, but that an individual generator must have 12 months of operating data during this two year period, for its output to be included in the calculation.

Subsection (k)(7)

TIEC commented that it is unclear whether the proposed language in subsection (k)(7) applies to the entire RPS requirements or to an individual retail entity's RPS requirement, and that while it may be appropriate for RECs that have exceeded their life to not be used to satisfy an individual REC requirement, PURA §39.904(m) requires that all RECs count toward the goal in PURA §39.904(a). TIEC recommended that the rule make it clear that the total annual requirement for the following period will be reduced by the un-retired RECs that have exceeded their life, and proposed language consistent with this recommendation.

Commission response

The commission agrees that subsection (k)(7) is unclear, and finds that the language is unnecessary as RECs should not exceed their life. Accordingly, the commission deletes this language.

Subsection (l)(1)

ERCOT stated that it will be able to implement the separate tracking and identification that the proposed rule envisions for compliance premiums, and noted that software changes will be needed to accommodate the proposed rule changes regarding the definition of small producer; the requirement to use actual generator performance data in the CCF; the introduction of compliance premiums; the annual requirement to increase the statewide RPS by the number of compliance premiums retired during the previous compliance period; and the 1:1.25 ratio for aggregator-estimated renewable-unit output. ERCOT stated that if the final rule is adopted by June, and there are no substantive changes to the rule as published, the necessary

software changes can be implemented, tested, and fully operational by the end of the year.

Commission response

Because this rulemaking has not been approved by June, the commission amends subsection (l)(1) to specify that compliance premiums shall be awarded for RECs awarded for energy generated after December 31, 2007. Since ERCOT awards RECs at the end of each quarter, this should allow ERCOT sufficient time to make the required changes.

Subsection (l)(4)

TIEC expressed its concern regarding subsection (l)(4) which increases the RPS to reflect the number of compliance premiums retired during the previous compliance period. TIEC stated that this has the effect of making the 500 MW target mandatory, contrary to PURA §39.904 and will increase the total cost of the program year over year. TIEC stated that REPs will have to buy additional compliance premiums or RECs to comply with the newly-set and unpredictable requirement, which will effectively raise the total cost of the RPS. Additionally, TIEC stated, because of the lack of a track record regarding many of the non-wind resources, it is possible that a generator could be awarded significant compliance premiums in one year, raising the RPS the next year, and be unable to produce energy at the same level the next year. TIEC commented that under the published rule, the result would be to create exposure for REPs and consumers based on an ever increasing RPS standard that may or may not reflect real-world generation performance. TIEC recommended that the commission avoid creating a moving target in the RPS and how it is calculated, and stated that REPs and consumers need to understand the potential burden of this requirement so they can plan and appropriately assign risk in their contracts. In concept, TIEC stated that the compliance premium program could be a reasonable mechanism to encourage the development of additional non-wind resources, but as implemented, it violates that statute, negatively impacts the current REC program, creates unwarranted potential volatility, and increases costs to all market participants.

Commission response

The language proposed for subsection (l)(4) was intended to address the concerns that the compliance premiums given as a bonus with non-wind RECs to provide incentive to reach the 500 MW non-wind target would result in more capacity being counted than was actually in existence. This provision is meant to ensure that the incentives given to those who seek non-wind RECs do not harm the program and do not result in the program falling short of its 5,000 MW renewable capacity requirement. While the commission acknowledges that this will likely increase the RPS in some years, the commission does not agree that this violates the statute. Retail entities are not being required to purchase non-wind RECs, but may choose to do so to meet their requirements. Additionally, all retail entities have the opportunity to purchase non-wind RECs and compliance premiums, and this should result in increased revenue for non-wind RECs throughout the years. The commission notes that the RPS will likely always be a moving target for retail entities because each retail entity's RPS is calculated based on its retail sales, which are highly unlikely to remain static. While this change does add another element to the changing nature of each retail entity's RPS and its costs, the commission believes that the increased risk will be modest, particularly in the near term. The current level of non-wind renewable development is low, and even with the changes that are being made in this rule to encourage non-wind renewable resources, it seems unlikely that the change in the RPS resulting from the retirement of compliance premiums will have a significant impact on the costs of complying with this rule.

Subsection (o)

CPS Energy stated that imposition of administrative penalties on a retail entity, defined to include an MOU, without qualification for failure to meet the rule's obligations is not authorized by PURA. CPS Energy requested that the language be clarified to only include municipally-owned utilities (MOUs) that offer customer choice.

Commission response

The commission believes that the modification of the definition of Retail Entity in subsection (c)(19) provides the result that CPS Energy is seeking with this recommendation. Subsection (o) only refers to Retail Entities, and the modification of the definition of Retail Entity makes it clear that MOUs not in customer choice are not Retail Entities. The commission believes that it has the authority to assess administrative penalties against MOUs that are participating in customer choice.

SWEPCO stated that it is not clear whether, with the deletion of language contained in the existing subsection (o), the commission would still consider mitigating factors causing non-compliance with the rule. SWEPCO requested the commission clarify whether it intends that the provisions of PURA §15.023 would allow continued reliance on, and consideration of, mitigating factors for failure to comply with REC obligations, or if the commission's intent is to the contrary, clarify its reasoning for such intent.

Commission response

The deletion of the mitigating factors from the prior version of subsection (o) will prevent the commission from considering those factors in assessing a penalty against a retail entity in violation of the rule. In developing the penalty in subsection (o), the commission considered the factors in PURA §15.023(c) and determined that $50 per deficient credit is appropriate.

TIEC commented that the proposed deletion of the penalty calculation in subsection (o)(2) is unnecessary, and that it is appropriate to base the penalty of the lesser of $50 or 200% of market, because this "right sizes" the penalty and ensures that it is not confiscatory. TIEC, however, recommended that the penalty be $50 per REC rather than per MWh as it is appropriate to assess the penalty based on the number of RECs that a retail entity is deficient and it is TIEC's understanding that this is how the penalty is currently administered.

Commission response

The commission believes that the $50 per deficient MWh credit is the most appropriate penalty and therefore the option of 200% of the market value is unnecessary. The commission does not agree that penalties need to be calculated on RECs rather than MWhs as a REC represents one MWh of renewable energy.

Subsection (p)

ERCOT commented, regarding subsection (p)(1), that it is not aware of what standards should be applied in deciding what is or is not a "recognized industry certification organization" and that in the event the program administrator is called upon to make a determination on those grounds, ERCOT would appreciate any additional clarity or guidance that the commission could provide.

Commission response

The commission agrees with ERCOT. In addition, it is appropriate that the installation of these generation units be done in compliance with P.U.C. Substantive Rules, such as current §25.211 and §25.212, applicable interconnection standards adopted pursuant to these rules, and federal laws. Therefore, the commission modifies the language to refer the rules, interconnection standards and federal laws. The commission also adds grid connection in subsection (p)(1) and deletes (p)(5) as proposed, because it is more clear to address the requirements for connection to the grid in accordance with applicable rules in the revised subsection (p)(1).

Austin Energy is currently a REC Aggregator of 390 solar, "behind the meter" installations. Austin Energy commented that subsection (p)(2) as proposed is inconsistent with Austin Energy's metering methodology, which was approved by the commission in Docket 31634, *Petition of City of Austin d/b/a Austin Energy for Approval of Metering Methodology*, December 19, 2006.

Austin Energy stated that if the language is adopted as proposed it would penalize Austin Energy and its solar rebate customers, or alternatively, raise costs of compliance unnecessarily. Austin Energy stated that the meters required by subsection (p)(2)(a), which allows for metering of microgenerators capable of transmitting actual generation data to the program administrator, known in the ERCOT Protocols as "ERCOT Polled Settlement" (EPS) metering "runs on the order of thousands of dollars per unit and is prohibitively and disproportionately expensive for such small generators." Austin Energy requested that proposed rule be modified to include a third option, consistent with the methodology approved in Docket Number 31634, which provides accurate measurement and reporting at a minimal compliance costs. Austin Energy stated that under the approved methodology, they read and record renewable energy output data from monthly stand-alone identification numbered meters, that are separate from the service address billing meter, and report the aggregated output data to the program administrator. Austin Energy stated that since the output would be read and reported accurately, and can be audited if necessary, there would be no need to discount the number or awarded RECs (as is proposed under subsection (p)(2)(A) for estimated data). Austin Energy supplied proposed language for this request.

ERCOT commented that it understood and supported the effort to encourage REC aggregators to use actual generation data by providing 1:1 recovery (1 REC to 1 MWh) where actual generation data is used, and applying a discount factor to aggregator estimation. However, it is not feasible to have each microgenerator within an aggregation unit transmit actual data to the program administrator as proposed in subsection (p)(2)(A). ERCOT stated that such meters are not installed in the ERCOT market for generators below 10 MW and that the number of microgenerators that are likely to be aggregated makes it infeasible to equip them all with advanced meters. ERCOT recommended that proposed (p)(2)(A) be amended to reference actual generation data that is collected and compiled by the aggregator, and subject to program administrator verification, as already provided in subsections (e)(3) and (g)(9). ERCOT proposed edits consistent with its comments.

In reply comments, the Wind Coalition commented that the treatment of REC Aggregators as discussed by Austin Energy and SWEPCO should be reconsidered and defined more broadly, and that restricting aggregation to microgenerators is overly prescriptive. The Wind Coalition suggested that the rule could be improved by broadening the definition to encompass any entity that represents multiple REC generating facilities. The Wind Coalition also suggested Texas facilitate appropriate customer protection enhancements, and that one change that would help guard against deceptive trade practices, such as double selling of renewable energy claims, and instill greater consumer confidence in renewable energy products, would be to modify the Texas REC Program to allow voluntary REC retirement sub-accounts, permitting RECs to be retired in the name of the end use customers who desire an improved level of certainty, such as small commercial green customers who want assurance they received the benefit of their "green purchase" without having to establish a full trading account.

Commission response

The commission agrees with Austin Energy and ERCOT that the method used by Austin Energy should be allowed under the rule. Therefore, the commission adds language as subsection (p)(2)(A) consistent with the requests of Austin Energy and ERCOT. However, the commission declines to remove the language proposed as subsection (p)(2)(A) and moves the language to subsection (p)(2)(C) with the change requested by SWEPCO. Although the commission acknowledges that the type of meters referenced in subsection (p)(2)(A) as proposed may not be installed on generators under 10 MW today, with the increased emphasis in the market on advanced meters, it is likely that meters with the functionality to send the information straight to ERCOT may become more cost effective and practical in the future. Therefore, the commission finds it appropriate to retain this language as an additional method of possible reporting.

The commission declines to allow facilities other than microgenerators to be included in aggregations as it finds that facilities larger than microgenerators should be able to participate in the program on their own.

At this time, the commission declines to require ERCOT to create the ability for voluntary REC retirement sub-accounts, as suggested in the Wind Coalition's reply comments for aggregation. Making this requirement would require a software change and could impact the timing of rule implementation by ERCOT. ERCOT has not conducted any analysis to determine how extensive this change would be, how long it would take, or any cost implications. Without information to assess the extent of the changes needed, the commission cannot determine whether this functionality that may be a service to some aggregators and their clients should be a requirement for ERCOT. The commission notes that the rule will have to be reopened to address changes required by HB 1090 of the 2007 legislative session. The commission will consider proposing sub-accounts for aggregators in that rulemaking.

SWEPCO requested that subsection (p)(2) be amended to reference "applicable protocols and procedures" rather than "protocols and procedures determined by the program administrator" because Protocol 14 is the currently approved protocol for reporting generation data related to RECs, and any changes in the Protocols should go through the ERCOT Protocol Revision process.

Commission response

The commission amends the language as requested.

Various Subsections

ERCOT proposed minor cleanup edits throughout, such as adding in references to "compliance premiums" and standardizing references to "compliance periods," or calendar years.

Commission response

The commission has made some of the minor cleanup edits suggested by ERCOT.

General Comments

Senator Robert L. Nichols applauded the commission for striving to develop incentive programs that will maximize opportunities for all types of renewable energy, and encouraged the commission to carefully considered issues associated with the creation of a single RPS for all renewable generation vs. the creation of a separate RPS for non-wind generation. Senator Nichols stated that biomass electric generating facilities hold great promise for the economy in East Texas; that a single RPS for all renewable generation will fail to create an incentive for non-wind generation; and that meaningful incentives will allow East Texas' abundant timber resources to be used in power generation and provide opportunities for economic growth.

Senator Todd Staples sent a letter of thanks for moving forward to establish incentives for the construction of non-wind renewable energy generation facilities in Texas, stated that biomass electric generation facilities hold great promise for the economy in East Texas, and encouraged the commission to develop incentive programs that will maximize opportunities for all types of renewable energy.

Representative Wayne Christian commented that an RPS with compliance premiums will likely create a disincentive for building any kind of renewable power generation by diluting the value of all RECs, and stated that modifying the current RPS to recognize a second class of renewable generation as is done in other states would more likely meet the legislature's non-wind generation target and overall mandate. Representative Christian urged the commission to consider the economic benefits of an RPS that provides significant value for non-wind renewable generation and establish a tiered RPS for non-wind generation.

Nacogdoches County Judge Joe English and the Nacogdoches Economic Development Corporation commented that it was not clear how a single RPS would serve as an incentive for non-wind renewable generation and in fact it appears to create a disincentive for the installation of any type of renewable generation. Judge English and Nacogdoches Economic Development Corporation urged the commission to fully consider the economic benefits that the installation of non-wind generation brings to Texas, and establish a separate RPS for non-wind generation.

Nacogdoches Power stated that it submitted comments in this project on January 2, 2007, (in response to the initial questions issued in this project) and wished to incorporate those comments by reference. In those comments, Nacogdoches Power stated that it was its belief that the proposal to award compliance premiums for non-wind generation as part of a single REC trading program would not provide a sufficient incentive to achieving the state's renewable energy objectives for non-wind renewable generation. Nacogdoches Power also believed that the non-wind RPS should not discriminate among non-wind renewable technologies. Nacogdoches Power firmly believed that the best way to achieve the target laid out by the Legislature in SB 20 is to establish a separate non-wind renewable portfolio system. In the comments specific to the Proposal for Publication, Nacogdoches Power stated that it believed the proposed amendment by the commission would not provide meaningful incentives for the installation of non-wind renewable generation, and as an alternative, proposed that the commission implement an RPS that utilizes separate tiers or classes for wind and non-wind renewable generation. Nacogdoches Power stated that such tiered RPS systems are in use in other states such as Pennsylvania and Connecticut. Nacogdoches Power urged the commission to revise the proposed amendment to more closely conform with the "express will of the Legislature that the specified minimum volumes of non-wind renewable resources will in fact be achieved," and suggested amendments to result in a single tiered RPS that both utilizes compliance premiums and satisfies the directives of the Legislature. Nacogdoches Power stated that non-wind renewable power generation, biomass generation in particular, can offer significant advantages to electricity consumers in Texas, such as reliable baseload generation located outside of transmission-constrained areas and significant ongoing economic development. Nacogdoches Power commented that it had performed a dispatch analysis using information developed by TXU that demonstrates that a biomass-fired facility could save electricity consumers in Texas millions of dollars on an annual basis by displacing inefficient marginal natural gas-fired units. Nacogdoches Power also commented that by increasing the diversity of generation sources and by providing baseload renewable generation, biomass-fired facilities can help reduce fossil fuel-based electricity pricing pressures, and that these benefits presumably underlie the Legislature's desire to create appropriate incentives to encourage the installation of at least 500 MW of non-wind renewable generation.

At the public hearing, Nacogdoches noted other benefits of biomass power: it would be a source of new jobs and investment; reduce the production of greenhouse gasses caused by the decomposition of wood waste; contributes to healthy forestry practices; help alleviate environmental problems caused by natural disasters that create a need to dispose of waste. Nacogdoches Power commented that non-wind projects need higher REC prices because wind projects receive greater federal tax benefits (1.9 cent Production Tax Credit for wind, 0.9 cents for biomass, geothermal and hydro); wind projects are eligible for five-year accelerated depreciation; non-wind renewables face higher development costs and longer permitting processes than wind; non-wind renewables have higher capital costs, but longer lifetimes than wind; and different resources need different incentives. Nacogdoches Power noted that the current REC price is $2.00/MWh and stated that to encourage most non-wind renewable development, the REC price would need to be $20.00-$25.00. Therefore, Nacogdoches Power stated that the compliance premium approach will result in little or no additional investment in non-wind renewables in Texas. Nacogdoches Power stated that a two-tiered RPS would encourage investment in biomass power, geothermal power, hydropower and other resources by setting the market price of non-wind RECs at an appropriate price for these technologies. They added that a two-tiered RPS would level the playing field for emerging technologies to compete with wind, and that other states have already successfully enacted a tiered RPS approach.

AES commented that the proposed rule is fundamentally flawed in its creation of a new class of REC-like "compliance premiums" as a mechanism for implementing the carve-out provision. In reply comments, the Wind Coalition stated that the compliance premium approach has drawbacks relative to the use of Texas RECs only, which already have the capability needed to

implement the 500 MW target. The Wind Coalition referred to its comments filed on January 3, 2006, in this project.

Commission response

As discussed in its response to comments on Question Three, the commission declines to amend the rule to require the RPS obligations to include separate non-wind requirements. The commission previously sought comments regarding an RPS requirement to meet the 500 MW non-wind target and issued the proposed rule without such a requirement, as the commission questions whether it has the authority to require such purchases. The 80th Legislature considered several bills that would have resolved this uncertainty, but none of them was adopted. In view of the uncertainty about the commission's authority to adopt a separate non-wind RPS, it is adopting the compliance premium approach that was laid out in the proposed rule. The commission considered all parties' comments in determining the most appropriate way for compliance premiums to be implemented, and has modified the rule regarding small producers and repowered facilities to help encourage the development and continuation of non-wind renewable generation.

AES recommended that the commission suspend or abate action on the rule pending the outcome of the 2007 Texas Legislative session. The Wind Coalition agreed. In reply comments, MeadWestvaco disagreed with AES as SB 20 was passed in 2005, and stated that it is important for the commission to move forward in adopting rules to foster the development of non-wind renewable energy technologies.

Commission response

The commission waited to consider a proposal for adoption in this project until after the 2007 Texas Legislative session.

Reliant commented that the existing rules, even with the proposed amendments are too narrowly drawn and unnecessarily limit developing technologies from participating in the REC trading program. Reliant proposed that the rules be modified to eliminate unnecessary limitations and to ensure that the rules are flexible enough to allow emerging technologies to be included in the REC trading program, and that facilities that are re-powered to use renewable fuels be encouraged to participate in the program. Reliant stated that changes to this rule may necessitate changes to other rules such as P.U.C. Substantive Rule §25.476, relating to *Labeling of Electricity with Respect to Fuel Mix and Environmental Impact*. Reliant recommended that the commission consider whether there are other actions that can be taken to help potential non-wind renewable energy developers become certified and participate in the REC trading program, and noted that there may be steps ERCOT could take to make the process easier on non-wind developers, who they stated are likely to be smaller companies. Reliant mentioned simplifying the Standard Form REC Account Agreement and additional education as examples.

Commission response

The commission appreciates the suggestions. Changes to the other rules such as P.U.C. Substantive Rule §25.476, relating to *Labeling of Electricity with Respect to Fuel Mix and Environmental Impact* may be considered in a subsequent rulemaking. ERCOT may review ways to simplify entry into the REC trading program as it deems appropriate, consistent with commission rules.

SOAR stated that it intends to take an existing ERCOT peaking plant, convert its fuel source from Natural Gas to Biofuel, and add a new steam generator that will increase its current nameplate capacity from 82 MW to 96 MW. SOAR stated that it intends to participate in the REC program, but it is restricted under the current rule. SOAR explained that its plant is designed to use animal fats (non-food feedstock) and convert it into a fuel source. This feedstock does not compete with the food chain and is designed to use what is now a waste product and covert it to clean energy. SOAR commented that its proposed changes would complement the PUC's desire to increase the amount of electricity delivered to customers using renewable generation in Texas, and would allow its plant to help diversify the state's electric generating resource portfolio and foster reductions in the cost of renewable energy technologies, and that the project will add to the reserve margin. SOAR recommended specific changes to the rule to permit its participation in the REC program as detailed in the specific comments.

Representative John Zerwas, M.D., requested that the commission change the necessary rules in order to allow SOAR's project to move forward.

Commission response

As discussed in regards to subsection (f), the commission has amended the rule to allow facilities repowered to use renewable energy up to 150 MW to qualify for RECs.

TXU Cities stated that they generally are supportive of goals which encourage cost-effective renewable energy resources in Texas, but do not favor the creation of artificial financial incentives to encourage the development of renewable resources that otherwise would not be developed because the cost of providing such incentives ultimately will be borne by customers through further increases in retail energy costs. TXU Cities commented that the policy would negatively impact end-use customers who ultimately bear all costs of energy in the market by increasing the RPS requirement, and this should be recognized. TXU Cities stated that there is evidence from Texas and other markets that individuals will voluntarily support renewable resources without the need for provision of mandated financial incentives, and that rather than adding additional regulatory-mandated cost to be uplifted to the market as a whole and passed on to customers, the development of renewable energy technologies should generally be left to competitive market forces and individual customer choice.

Commission response

The commission finds that the REC Trading Program is required by PURA. The commission has considered the impacts to the end use customers and the directives and intent of PURA §39.904 in adopting these amendments.

Public Hearing Comments

At the public hearing, a representative for TIEC and MeadWestvaco responded to Nacogdoches Power's comments regarding the need for a two-tiered RPS to benefit biomass, and pointed to the comments that were filed that indicated that a rule change to allow a higher percentage of fossil fuels to be used could itself result in additional non-wind participation without the need for a two-tiered RPS.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 15.023, 39.101(b)(3) and 39.904 (Vernon 2007). PURA §14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §15.023 provides the commission the power to impose administrative penalties against a person regulated under PURA who violates PURA or an order adopted under PURA; §39.101(b)(3) provides that a customer is entitled to have access to providers of energy generated by renewable energy resources; and §39.904, provides the commission the power to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 15.023, 36.204, 39.101, and 39.904.

§25.173. Goal for Renewable Energy.

(a) Purpose. The purposes of this section are:

(1) to ensure that the cumulative installed generating capacity from renewable energy technologies in this state totals 2,280 megawatts (MW) by January 1, 2007, 3,272 MW by January 1, 2009, 4,264 MW by January 1, 2011, 5,256 MW by January 1, 2013, and 5,880 MW by January 1, 2015, with a target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy, and that the means exist for the state to achieve a target of 10,000 MW of installed renewable capacity by January 1, 2025;

(2) to provide for a renewable energy credits trading program by which the renewable energy requirements established by the Public Utility Regulatory Act (PURA) §39.904(a) may be achieved in the most efficient and economical manner;

(3) to encourage the development, construction, and operation of new renewable energy resources at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources;

(4) to protect and enhance the quality of the environment in Texas through increased use of renewable resources; and

(5) to ensure that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA §39.101(b)(3).

(b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to Definitions), and retail entities as defined in subsection (c) of this section.

(c) Definitions.

(1) Compliance period--A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a retail entity.

(2) Compliance premium--A premium awarded by the program administrator in conjunction with a renewable energy credit that is generated by a renewable energy source that is not powered by wind and meets the criteria of subsection (l) of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one renewable energy credit.

(3) Designated representative--A responsible natural person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

(4) Existing facilities--Renewable energy generators placed in service before September 1, 1999.

(5) Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(6) Microgenerator--A customer who owns one or more eligible renewable energy generating units with a rated capacity of less than 1MW operating on the customer's side of the utility meter.

(7) New facilities--Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Program administrator--The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.

(10) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.

(11) REC offset (offset)--A REC offset represents one megawatt-hour (MWh) of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums.

(12) Renewable energy credit (REC or credit)--A REC represents one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.

(13) Renewable energy credit account (REC account)--An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs or compliance premiums by a program participant.

(14) Renewable energy credits trading program (trading program)--The process of awarding, trading, tracking, and submitting RECs or compliance premiums as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(15) Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(16) Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(17) Renewable Portfolio Standard (RPS)--The amount of capacity required to meet the requirements of PURA §39.904 pursuant to subsection (h) of this section.

(18) Repowered Facility--An existing facility that has been modernized or upgraded to use renewable energy technology to produce electricity consistent with this rule.

(19) Retail entity--Municipally-owned utilities, generation and transmission cooperatives and distribution cooperatives that offer customer choice; retail electric providers (REPs); and investor-owned utilities that have not unbundled pursuant to PURA Chapter 39.

(20) Settlement period--The first calendar quarter following a compliance period in which the settlement process for that compliance period takes place.

(21) Small producer--A renewable resource that is less than ten megawatts (MW) in size.

(d) Renewable energy credits trading program (trading program). Renewable energy credits may be generated, transferred, and retired by renewable energy power generators certified pursuant to subsection (n) of this section, retail entities, and other market participants as set forth in this section.

(1) The program administrator shall apportion an RPS requirement among all retail entities as a percentage of the retail sales of each retail entity as set forth in subsection (h) of this section. Each retail entity shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (k) of this section to comply with this section. The requirement to retire RECs to comply with this section becomes effective on the date a retail entity begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

(2) A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (k) of this section.

(3) RECs shall be credited on an energy basis as set forth in subsection (k) of this section.

(4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice have no RPS requirement. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to retail entities as set forth in subsection (k) of this section.

(5) Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.

(e) Facilities eligible for producing RECs and compliance premiums in the renewable energy credits trading program. For a renewable facility to be eligible to produce RECs and compliance premiums in the trading program it must be either a new facility, a small producer, or a repowered facility as defined in subsection (c) of this section and must also meet the requirements of this subsection.

(1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (n) of this section.

(2) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 25.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.

(3) For a renewable energy technology that requires the use of fossil fuel that exceeds 2.0% of the total annual fuel input on a BTU or equivalent basis, RECs can only be earned on the renewable portion of the production. A renewable energy resource using a technology described by this paragraph shall comply with the following requirements:

(A) A meter shall be installed and periodic tests of the heat content of the fuel shall be conducted to measure the amount of fossil fuel input on a British thermal unit (BTU) or equivalent basis that is used at the facility;

(B) The renewable energy resource shall calculate the electricity generated by the unit in MWH, based on the BTUs (or equivalent) produced by the fossil fuel and the efficiency of the renewable energy resource, subtract the MWH generated with fossil fuel input from the total MWH of generation and report the renewable energy generated to the program administrator;

(C) The renewable energy resource shall report the generation to the program administrator in the measurements, format and frequency prescribed by the program administrator, which may include a description of the methodology for calculating the non-renewable energy produced by the resource; and

(D) The renewable energy resource is subject to audit to verify the accuracy of the data submitted to the program administrator and compliance with this section, to be conducted by the program administrator or an independent third party, as requested by the program administrator. If the program administrator requires a third party audit, the audit shall be performed at the expense of the renewable energy resource.

(4) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed renewable facility if it otherwise meets the requirements of this section.

(5) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(6) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities shall be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.

(7) For repowered facilities, a facility is eligible to earn RECs on all renewable energy produced up to a capacity of 150 MW. A repowered facility with a capacity greater than 150 MW may earn RECs for the energy produced in proportion to 150 divided by nameplate capacity.

(f) Facilities not eligible for producing RECs in the renewable energy credits trading program. A renewable facility is not eligible to produce RECs in the trading program if it is:

(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519; or

(2) An existing facility that is not a small producer as defined in subsection (c) of this section or has not been repowered as permitted under subsection (e) of this section.

(g) Responsibilities of program administrator. The commission shall appoint an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

(1) Create accounts that track RECs or compliance premiums for each participant in the trading program;

(2) Award RECs or compliance premiums to registered renewable energy facilities on a quarterly basis based on verified meter reads;

(3) Award offsets to retail entities on an annual basis based on a nomination submitted by the retail entity pursuant to subsection (i) of this section;

(4) Annually record the retirement of RECs or compliance premiums that each retail entity submits;

(5) Retire RECs at the end of each REC's compliance life;

(6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

(7) Create an exchange procedure where persons may purchase and sell RECs or compliance premiums. The exchange shall ensure the anonymity of persons purchasing or selling RECs or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval;

(8) Make public each month the total energy sales of retail entities in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the RPS requirement to each retail entity in accordance with subsection (h) of this section; and

(11) Submit an annual report to the commission. The program administrator shall submit a report to the commission on or before May 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and retail entities. At a minimum, the report shall contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all retail entities participating in the trading program, each retail entity's RPS requirement, the number of offsets used by each retail entity, the number of RECs retired by each retail entity, the number of compliance premiums retired by each retail entity, a listing of all retail entities that were in compliance with the RPS requirement, a listing of all retail entities that failed to comply with the RPS requirement, and the deficiency of each retail entity that failed to retire sufficient RECs or compliance premiums to meet its RPS requirement.

(h) Allocation of RPS requirement to retail entities. The program administrator shall allocate RPS requirements among retail entities. Any renewable capacity that is retired before January 1, 2015 or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after the facility is retired or the capacity shortfall occurs. The program administrator shall use the following methodology to determine the total annual RPS requirement for a given year and the final RPS allocation for individual retail entities:

(1) The total statewide RPS requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the applicable capacity requirement set forth in this paragraph multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (j) of this section. The renewable energy capacity requirements for the compliance period beginning January 1, of the year indicated shall be:

(A) 1,400 MW of new resources in 2006;

(B) 1,400 MW of new resources in 2007;

(C) 2,392 MW of new resources in 2008;

(D) 2,392 MW of new resources in 2009;

(E) 3,384MW of new resources in 2010;

(F) 3,384 MW of new resources in 2011;

(G) 4,376 MW of new resources in 2012;

(H) 4,376 MW of new resources in 2013;

(I) 5,000 MW of new resources in 2014; and

(J) 5,000 MW of new resources for each year after 2014.

(2) The final RPS allocation for an individual retail entity for a compliance period shall be calculated as follows:

(A) Each retail entity's preliminary RPS allocation is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities, and multiplying that percentage by the total statewide RPS requirement for that compliance period.

(B) The adjusted RPS allocation for each retail entity that is entitled to an offset is determined by reducing its preliminary RPS allocation by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the retail entity's preliminary RPS allocation. The total reduction for all retail entities is equal to the total usable offsets for that compliance period.

(C) Each retail entity's final RPS allocation for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional RPS allocation shall be calculated by dividing the retail entity's preliminary RPS allocation by the total preliminary RPS allocation of all retail entities. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the retail entity's adjusted RPS allocation to produce the retail entity's final RPS allocation for the compliance period.

(3) Concurrent with determining final individual RPS allocations for the current compliance period in accordance with this subsection, the program administrator shall recalculate the final RPS allocations for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's corrected final RPS allocation and its original final RPS allocation for the previous compliance periods shall be added to or subtracted from the retail entity's final RPS allocation for the current compliance period.

(i) Nomination and award of REC offsets.

(1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets were nominated in a filing with the commission by June 1, 2001.

(2) The program administrator shall award offsets consistent with the commission's actions to verify designations of REC offsets and with this section.

(3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.

(4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:

(A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative (or successor in interest) nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it was owned by or its output was committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(5) If the production of energy from a facility that is eligible for an award of REC offsets ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in paragraph (4)(A) of this subsection has lapsed or is no longer in effect, the retail entity shall no longer be awarded REC offsets related to the facility.

(6) REC offsets shall not be traded.

(j) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate credits to retail entities shall be calculated during the fourth quarter of each odd-numbered compliance year. The capacity conversion factor shall:

(1) Be based on actual generator performance data for the previous two years for all renewable resources in the trading program during that period for which at least 12 months of performance data are available.

(2) Represent a weighted average of generator performance; and

(3) Use all actual generator performance data that is available for each renewable resource, excluding data for testing periods.

(k) Production, transfer, and expiration of RECs. The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

(1) The owner of a renewable resource shall earn one REC when a MWh is metered at that renewable resource. The program administrator shall record the energy in metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis. Quarterly production shall be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

(2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.

(3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number, REC issue date, and the renewable resource that produced the REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) A retail entity shall surrender RECs to the program administrator for retirement from the market in order to meet its RPS requirement for a compliance period. The program administrator will document all REC retirements annually.

(5) On or after each April 1, the program administrator will retire RECs that have not been retired by retail entities and have reached the end of their compliance life.

(6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.

(7) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance period (calendar year) in which the credits are generated. All RECs shall have a compliance life of three compliance periods, after which the program administrator will retire them from the trading program.

(8) Each REC that is not used in the compliance period in which it was created may be banked and is valid for the next two compliance periods.

(l) Target for renewable technologies other than wind power. In order to meet the target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy as set forth in subsection (a)(1) of this section, the program administrator shall award compliance premiums to certified REC generators other than those powered by wind that were installed and certified by the commission pursuant to subsection (n) of this section after September 1, 2005. A compliance premium is created in conjunction with a REC.

(1) For eligible non-wind renewable technologies, one compliance premium shall be awarded for each REC awarded for energy generated after December 31, 2007.

(2) Except as provided in this subsection, the award, retirement, trade, and registration of compliance premiums shall follow the requirements of subsections (d), (k) and (m) of this section.

(3) A compliance premium may be used by any entity toward its RPS requirement pursuant to subsection (h) of this section.

(4) The program administrator shall increase the statewide RPS requirement calculated for each compliance period pursuant to subsection (h)(1) of this section by the number of compliance premiums retired during the previous compliance period.

(m) Settlement process. The first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each retail entity of its total RPS requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each retail entity shall submit credits or compliance premiums to the program administrator from its account equivalent to its RPS requirement for the previous compliance period. If the retail entity does not submit sufficient credits or compliance premiums to satisfy its obligation, the retail entity is subject to the penalty provisions in subsection (o) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

(n) Certification of renewable energy facilities. The commission shall certify all renewable facilities that will produce either REC offsets, RECs, or compliance premiums for sale in the trading program. To be awarded RECs, or REC offsets, or compliance premiums, a power generator must complete the certification process described in this subsection. The program administrator shall not award offsets, RECs, or compliance premiums for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility shall file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application shall be filed with the commission within 30 days of such changes.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either certify the renewable facility as eligible to receive RECs, offsets, or compliance premiums, or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action.

(3) Upon receiving notice of certification of new facilities, the program administrator shall create a REC account for the designated representative of the renewable resource.

(4) The commission or program administrator may make on-site visits to any certified facility, and the commission shall decertify any facility if it is not in compliance with the provisions of this section.

(5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a retail entity prior to the decertification remain valid.

(o) Penalties and enforcement. If by April 1 of the year following a compliance period the program administrator determines that a retail entity has not retired sufficient credits or compliance premiums to satisfy its allocation, the retail entity shall be subject to an administrative penalty pursuant to PURA §15.023, of $50 per MWh that is deficient.

(p) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the REC trading program. The program administrator shall assign to the REC aggregator all RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units shall be installed and connected to the grid in compliance with P.U.C. Substantive Rules, applicable interconnection standards adopted pursuant to the P.U.C. Substantive Rules, and federal rules.

(2) Notwithstanding subsection (e)(3) of this section, a REC aggregator may use any of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose any of the methods listed below for each aggregation unit.

(A) The REC aggregator may provide the program administrator with production data that is measured and verified by an electronic meter that meets ANSI C12 standards and that will be separate from the aggregator's billing meter for the service address and for which the billing data and the renewable energy data are separate and verifiable data. Such actual data shall be collected and transmitted within a reasonable time and shall be subject to verification by the program administrator. REC aggregators using this method shall be awarded one REC for every MWh generated.

(B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method shall be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician shall provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator pursuant to this paragraph (2) of this subsection.

(C) A generating unit may have a meter that transmits actual generation data to the program administrator using applicable protocols and procedures. Such protocols and procedures shall require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method shall be awarded one REC for every MWh generated.

(3) REC aggregators shall register with the commission and the program administrator and also register to participate in the REC trading program.

(4) A microgenerator participating in the REC trading program individually without the assistance of a REC aggregator shall comply with the requirements of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703396
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 26, 2007
Proposal publication date: February 9, 2007
For further information, please call: (512) 936-7223

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

22 TAC §711.2

The Texas State Board of Examiners of Dietitians (board) adopts an amendment to §711.2, concerning the licensing and regulation of dietitians. Specifically, the amendment covers late renewal fees. The amendment is adopted without changes to the proposed text as published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2818), and the section will not be republished.

BACKGROUND AND PURPOSE

The amendment relating to late renewal fees is required by statutory changes to Texas Occupations Code, Chapter 701, by House Bill 1155, passed during the 79th Legislature, Regular Session, 2005.

SECTION-BY-SECTION SUMMARY

The amendment to §711.2 reflects the change in the method of calculating the late renewal fee in accordance with Texas Occupations Code, Chapter 701, specifically §701.301(d). The statute provides that a person whose license has been expired for 90 days or less may renew the license by paying to the board a fee that is equal to 1-1/4 times the amount of the renewal fee. The statute further provides that if a person's license has been expired for more than 90 days, but less than one year, the person may renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee. The late renewal fees adjustment in the amendment complies with the statutory directive.

COMMENTS

The board did not receive any comments regarding the proposed rules during the comment period.

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §701.152, which authorizes the board to adopt rules necessary for the performance of the board's duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2007.

TRD-200703384
Janet Hall
Acting Chair
Texas State Board of Examiners of Dietitians
Effective date: September 1, 2007
Proposal publication date: May 25, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 11. TEXAS CANCER COUNCIL

CHAPTER 704. TEXANS CONQUER CANCER PROGRAM

25 TAC §§704.1, 704.7, 704.11

The Texas Cancer Council adopts amendments to §§704.1, 704.7 and 704.11 concerning the Texans Conquer Cancer Advisory Committee, guidelines for awarding support services funds, and confidentiality of records with changes as published in the May 18, 2007, issue of the *Texas Register* (32 TexReg 2743) and will be republished.

The amendments to §704.1 add clarity and definition to the procedure for determining the term of office of the members of the advisory committee for the Texans Conquer Cancer License Plate Program. The changes to §704.7 update the applicable guidelines for the application form and conform the terminology used in the rule to the current usage. The name of the Texas Department of Health in §704.11 is amended to conform to the new statutory name of Texas Department of State Health Services.

No public comments were received.

The amendments are adopted under the Texas Health and Safety Code Annotated, §102.010 which directs the Council to adopt rules governing the submission and approval of grant requests and the cancellation of grants, and §102.017(c) which directs the Council to establish guidelines for spending the money in the Texans Conquer Cancer Account. These amendments implement Texas Health and Safety Code, §102.017 and §102.018 which create and govern the Texans Conquer Cancer program, account, and advisory committee.

There is no other statute, article or code that is affected by these amendments.

§704.1. Texans Conquer Cancer Advisory Committee.

(a) Advisory Committee.

(1) The advisory committee shall be appointed under and governed by this section.

(2) The name of the advisory committee is Texans Conquer Cancer Advisory Committee (TCCAC).

(3) The council is authorized by Health and Safety Code, §102.018 to appoint a seven-member advisory committee.

(b) Purpose. The purpose of the TCCAC is to assist and advise the council regarding the Texans Conquer Cancer program.

(c) Tasks. The TCCAC shall:

(1) assist the council in establishing guidelines for spending money credited to the Texas Conquer Cancer Account (TCCA); and

(2) review and make recommendations to the council on applications submitted to the council for grants funded with money credited to the TCCA.

(d) Terms of TCCAC members.

(1) The terms of office for each member shall be four years, with the terms of three or four members expiring on January 31st of each odd-numbered year. The term of office of Group A, made up of three of the original members expired on January 31, 2007. The term of office of the Group B, consisting of the remaining four original members, will expire on January 31, 2009. Thereafter, the terms of the Group members and the terms of Group B members will expire on alternate odd-numbered years, beginning with Group A in 2011, resulting in a four-year term for each group.

(2) Members serve without compensation and are not entitled to reimbursement for expenses.

(3) If a vacancy occurs, the council shall appoint a person to serve the unexpired portion of that term.

(4) The TCCAC shall select from among its members a presiding officer every odd-numbered year at the first committee meeting held during that calendar year.

(e) Meetings.

(1) The TCCAC shall meet at least 30 days prior to a council board meeting or when directed by the council or Executive Director to conduct TCCAC business.

(2) Members shall attend meetings as scheduled. A TCCAC member who is unable to attend a meeting shall inform the presiding officer prior to the date of the meeting. Meetings may be held via teleconference.

(3) Meeting arrangements shall be made by the presiding officer in consultation with council staff.

(4) The TCCAC is not a governmental body as defined in the Open Meetings Act, therefore meetings need not comply with the requirements of the Open Meetings Act.

(5) Four members of the TCCAC shall constitute a quorum.

(6) The TCCAC shall report to council staff and a committee of the council regarding its reviews of applications submitted. The report should include a description of the review process and recommendations for awards. The recommendation shall be determined by a simple majority vote of the TCCAC.

§704.7. Guidelines for Awarding Support Services Funds.

(a) This section governs the submission and review of grant applications, and the award, amendment, and termination of grants.

(b) The intent of these grants is to provide support services to cancer patients and their families.

(c) Funds from the TCCA will be used to award grants to nonprofit organizations that provide a range of support services needed by cancer patients and their families.

(d) When the amount of funds in the TCCA becomes substantial, a notification of available funds will be published in the *Texas Register*, and the council will issue a Request For Applications (RFA).

(1) Funds may be used to provide the following allowable services, which include but are not limited to:

(A) Transportation

(B) Childcare

(C) Medical equipment

(D) Consumable supplies for cancer care

(E) Lodging for patients and/or family during active treatment

(F) Medications and equipment required for symptom control

(G) Rent assistance during active treatment

(H) Food assistance during active treatment

(2) Because other resources may cover these costs, funds shall not be used to provide the following unallowable services, which include but are not limited to:

(A) Expenses associated with cancer treatment such as:

(i) Hospitalization

(ii) Surgery

(iii) Outpatient care, including laboratory tests and physician visits

(iv) Chemotherapy

(v) Radiation

(vi) Health insurance deductibles

(B) Operating expenses for the grantee such as utilities, salaries, office equipment, entertainment

(3) Items not listed in paragraphs (1) and (2) of this subsection are not necessarily allowable.

(e) Scope. The council will award grants taking into consideration recommendations from the TCCAC.

(f) Application Requirements.

(1) The council adopts by reference an application form entitled "Texans Conquer Cancer Patient Support Services Application (2008)". This form is available from the council office.

(2) Applicants must follow the format of the "Patient Support Services Application (2008)" form.

(3) Applications that are incomplete, are not in the proper format, or are marked as received by the council after the posted deadline shall be automatically disqualified and shall not be forwarded to the TCCAC for review or recommendation for award.

(g) Application Submission.

(1) The grant application must be submitted to the council staff in accordance with instructions contained in the applicable RFA.

(2) Upon receipt, staff will review the proposals for completeness.

(3) All questions regarding submission and review process may be directed to council staff. The council staff shall not answer questions or provide advice to applicants regarding the merits of any application during the application process.

(4) The Texans Conquer Cancer Advisory Committee will review applications for merit and will make funding recommendations to the TCC for final funding approval. Funding availability will be announced in the *Texas Register* and on the TCC website at www.tcc.state.tx.us at least 45 days prior to the deadline for receipt of applications. The grant application amount will be identified in the funding announcement. The application must be submitted in writing (Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711) or through e-mail to applications@tcc.state.tx.us using the application form referenced in subsection (f)(1) of this section. Council decisions will be made during Council meetings, and the awardees will be contacted approximately 15 days after the meeting and will be sent a contract that must be signed as a condition to receiving the grant funds.

(h) Review Process.

(1) Applications will be collected by the council staff and forwarded to the TCCAC. Council staff will be available to the TCCAC to answer questions concerning applicable statutes, council rules, requirements, and procedures.

(2) The TCCAC will review and evaluate each eligible application using appropriate selection criteria established in the RFA.

(3) All applications that the TCCAC reviews will be submitted to a committee of the council for additional technical review.

(4) The TCCAC shall make recommendations to the council committee regarding the applications.

(5) A report from the council committee will be submitted to the full council before a final funding decision is made. The report shall include the TCCAC recommendation, the committee recommendation, and the basis for the committee's recommendation. The council will review recommendations from TCCAC at the next scheduled meeting of the council.

(6) Council members may review an application in its entirety prior to making a funding decision.

(7) Council approval is based on the requirements identified in the RFA.

(8) The council will set funding caps for all awards.

(i) Approval.

(1) The council staff will notify applicants of the final decision.

(2) If an applicant's application is approved by the council, grant money will not be disbursed until the grantee signs a contract with the council.

(3) All council funding decisions are final and are not subject to reconsideration, appeal, or administrative or judicial review.

(j) Reporting. Grantees must submit reports to the council as described in the Guidelines for Awarding Support Services Funds.

(k) Expense Reimbursement.

(1) Funding for this program will be on a reimbursement basis only. Once organizations are selected to receive funding under this program they will be provided a Financial Status Report Form 269A, which will be used to request reimbursement and report financial actions. Claims for reimbursement of actual expenses of services delivered can be submitted once a month or quarterly.

(2) TCC grantees are required to collect performance data and report performance accomplished with funding from this program. A report indicating the number of people directly served by the grant and a report indicating the provided services must be submitted with the Reimbursement Request.

§704.11. Confidentiality of Records.

(a) A grantee who provides direct services must have a system to protect client and patient records from inappropriate disclosure. Disclosure of confidential information must be in accordance with applicable law.

(b) As required by §5.04 of the Human Immunodeficiency Virus Services Act, Article 4419b-4, Texas Revised Civil Statutes, a grantee who receives funds for residential or direct client services or programs shall develop and implement guidelines regarding confidentiality of medical information regarding Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection.

(1) The guidelines shall apply to all employees of the grantee and clients, patients, and residents served by the grantee.

(2) The guidelines shall be consistent with guidelines published by the Texas Department of State Health Services and with state and federal regulations.

(3) A grantee that does not adopt confidentiality guidelines as required by this section is not eligible to receive state funds until the guidelines are adopted and implemented.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2007.

TRD-200703385
Sandra Balderrama
Executive Director
Texas Cancer Council
Effective date: August 23, 2007
Proposal publication date: May 18, 2007
For further information, please call: (512) 438-3029

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS

SUBCHAPTER B. REQUIREMENTS TO RECEIVE STATE FUNDS OR ADMINISTER STATE PROGRAMS

31 TAC §§520.11 - 520.13

The Texas State Soil and Water Conservation Board (State Board) adopts new §§520.11 - 520.13, concerning agency administration of fiscal responsibilities without changes to the proposed text as published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3533) and will not be republished.

Specifically, the new rules provide the agency greater oversight for the funds that are granted or provided to soil and water conservation districts and to have increased oversight for the programs that are administered by soil and water conservation districts for this agency.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2007.

TRD-200703379
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: August 23, 2007
Proposal publication date: June 15, 2007
For further information, please call: (254) 773-2250 x252

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §304.2

The State Board of Trustees for the Texas Emergency Services Retirement System (System) adopts the repeal of 34 *Texas Administrative Code* §304.2, relating to the probationary period for membership in the Texas Emergency Services Retirement System (System) without changes to the proposal as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3967).

The rule on probationary period before membership is repealed because identical text will be in statute, Title 8 *Government Code*, Subtitle H. Texas Emergency Services Retirement System, §862.0021 created under House Bill 2400 which goes into effect September 1, 2007. As stated in statute, a participating department may impose a probationary period for a volunteer or auxiliary employee. If a department chooses to adopt a probationary period, the period must end not later than six months after the date the person begins service with the participating department and the department is not required to pay contributions during the probationary period. The person's membership would begin the date that the department begins payment of contributions for that person, without regard to whether the person's service is subject to a probationary period for other purposes.

There were no comments received regarding the proposed repeal.

The repeal is adopted under the statutory authority of Title 8, *Government Code*, Subtitle H Texas Emergency Services Retirement System. No other statutes, articles, or codes are affected by the rule repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703394
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Effective date: August 26, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.1

The State Board of Trustees for the Texas Emergency Services Retirement System (System) adopts amendments to 34 *Texas Administrative Code* §306.1 regarding credit for certain prior service of members of the Texas Emergency Services Retirement System (System) without changes to the proposal as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3968). The amended rule will not be republished.

The amended rule will authorize participating departments to purchase pension credit for prior service of its members performed before the department joined the System. The System provides retirement, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System.

The amended rule will simplify the administration of the pension system by limiting the options and the time period in which a department may purchase prior service for participating members under this section. The amended rule establishes 10 years as the maximum amount of qualified prior service credit in the System that a department may purchase for a member under this section. The amended rule will allow a new department to purchase prior service credit within two years of joining the System.

As amended, the rule will eliminate the option for a participating department to purchase an accrued time benefit for prior service performed by a member prior to entry into the System. The amendments will eliminate the current prior service options known as "Accrued Time" or "Accrued Time with Buyback" to reduce the complexity of administration and to eliminate options that could provide inadequate benefits.

The Board was also concerned that the purchase of accrued time benefits by departments would result in fewer members vesting in the System and limit the ability of members to qualify for System pension benefits. Although the "accrued time" option allowed departments to provide equivalent benefits for prior service performed under the Texas Local Fire Fighters Retirement Act, the service purchased did not count toward System vesting or retirement benefits. All prior service purchased under the amended rule will count as qualified service in the System and will allow participating members to vest sooner and receive higher benefits from the System.

There were no comments received regarding the proposed amendments.

The amendment is adopted under the statutory authority of Title 8, *Government Code*, Subtitle H Texas Emergency Services Retirement System. No other statutes, articles, or codes are affected by the rule adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703395
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Effective date: August 26, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §308.3

The State Board of Trustees for the Texas Emergency Services Retirement System (System) adopts amendments to 34 *Texas Administrative Code* §308.3, relating to disability retirement benefits in the Texas Emergency Services Retirement System (System) without changes to the proposal as published in the June 29, 2007, issue of *Texas Register* (32 TexReg 3969).

The amendment to the rule on disability retirement annuities will provide for the amounts paid to a recipient of a disability annuity and the portions awarded based on the departmental contribution rates. System members under the statutory authority of amendments to *Government Code* §864.004 and §864.005 which were enacted by House Bill 2400, 80th Regular Legislative Session and which go into effect September 1, 2007 provides for a clear process for the implementation of both temporary and permanent disability for any person injured during the service of performing emergency services duties. This statutory change sets the parameters for eligibility for disability retirement benefits and the process for certification and continuance of disability benefits. The amended rule deletes reference to the previous process of applying to the Social Security Administration for certification as permanently disabled by the second anniversary of the disability, in conformity with the amended statute.

As determined by the firm of Rudd and Wisdom, Inc. the changes in §864.004 and §864.005 of the *Government Code* would have the potential to slightly reduce the actuarial liability for on-duty disability benefits. However, in the August 31, 2006 actuarial valuation of the System, only 0.7% (12 of 1,766) of the System's retirees and beneficiaries were on-duty disability retirees, and the present value of their future benefits was only 2.1% of the present value of future benefits for all the inactive members. For the active members, only 1% of the present value of future benefits was for future on-duty disability benefits. So a small reduction in the present value of future on-duty disability benefits would be a very small reduction in the total present value of future benefits of the System. The firm does not recommend a change in the actuarial assumption for on-duty disability incidence rates, but will monitor future experience and make a change in these rates if warranted by the experience. In the firm's opinion, the changes that §4 of House Bill 2400 makes to §864.004 and §864.005 will make would have a very small positive effect on the actuarial condition of the System in the future. However the changes are considered immaterial.

There were no comments received regarding the proposed amendments.

The amendment is adopted under the statutory authority of Title 8, *Government Code,* Subtitle H Texas Emergency Services Retirement System. No other statutes, articles, or codes are affected by the rule adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703397
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Effective date: August 26, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

34 TAC §308.4

The State Board of Trustees for the Texas Emergency Services Retirement System adopts amendments to 34 *Texas Administrative Code* §308.4 relating to death benefit payments for surviving spouses of deceased members of the Texas Emergency Services Retirement System (System). The amended rule is adopted without changes and will not be republished. The amendments were proposed for public comment in the June 29, 2007, issue of *Texas Register* (32 TexReg 3970).

The adopted amendments expand the rule relating to death benefits for the surviving spouse of a deceased member who dies as an active member of a participating department before retirement but after meeting the minimum age and service requirements for service retirement. As amended, the adopted rule provides for entitlement to two-thirds of the monthly annuity that the decedent would have received if the decedent had retired on the date of death. The adopted rule amendment replaces what was in prior statute with language that is consistent with changes to the statute made in 2007.

The adopted amendments provide that a surviving spouse of a deceased member, who dies after terminating service with all participating departments and after meeting a service retirement requirement under *Government Code*, §864.001, and related board rules, but before attaining the age of 55 is entitled to a death benefit annuity, beginning as provided by that section, equal to two-thirds of the monthly annuity to which the decedent would have been entitled to if the decedent had retired on the date of death. Amendments to *Government Code*, §864.007 and §864.008, which were enacted by House Bill 2400, 80th Regular Legislative Session, and which go into effect September 1, 2007, provide for clear distribution of benefits through the rulemaking process rather than through statute to allow the State Board of Trustees the ability to make additions or changes relating to distribution.

The Board received one comment regarding the proposed amendments. Paul Richard, Chairman of the West Columbia Volunteer Fire Department Pension Board, stated that he is in favor of the proposed rules, but has a concern about the process. He suggested amending the statute which relates to this rule to allow the spouse an option of receiving the death benefit as either a lump sum or allowing the spouse to wait to receive monthly benefits. He also suggested that, if the active firefighter has served 15 years but dies before the age of 55, the spouse should receive both benefits before the firefighter would have reached age 55.

The amendment is adopted under the statutory authority of Title 8, *Government Code,* Subtitle H, Texas Emergency Services Retirement System. No other statutes, articles, or codes are affected by the rule adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703398

Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Effective date: August 26, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.10

The State Board of Trustees for the Texas Emergency Services Retirement System (System) adopts new 34 *Texas Administrative Code* §310.10 relating to voluntary payments by member departments in the Texas Emergency Services Retirement System (System) without changes. The rule will not be republished. The new rule was proposed for public comment in the June 29, 2007, issue of *Texas Register* (32 TexReg 3971).

The new rule authorizes and provides the conditions necessary for participating departments to provide supplemental payments to annuitants of the department. The department may provide for a permanent increase or a one time increase in the annuity, but the increase must apply to all of the annuitants in the same classification and may be based on persons who qualified for an annuity under a previously lower contribution rate.

Government Code §864.0135 as enacted by HB 2400, 80th Regular Legislative Session, 2007 allows the board, by rule, to authorize a participating department to make either one or more supplemental payments, such as a 13th payment in a 12 month period, or to increase monthly benefits payable to retirees and beneficiaries. The statute requires the electing participating department to fund these additional benefits. The method used by the department would be described in a contractual agreement between the Office of the Fire Fighters' Pension Commissioner, the participating department, and the governing entity.

The Board received no comments regarding the proposed new rule.

The rule is adopted under the statutory authority of Title 8, *Government Code*, Subtitle H Texas Emergency Services Retirement System.

No other statutes, articles, or codes are affected by the rule adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2007.

TRD-200703400
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Effective date: August 26, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Building and Procurement Commission

Notice of Agency Name Change

Through the enactment of House Bill 3560, 80th Legislature, 2007, the Governor and the Legislature have directed that the Texas Building and Procurement Commission (TBPC) divide its duties and responsibilities between its successor agency, the Texas Facilities Commission (TFC), and the Comptroller of Public Accounts (Comptroller). All powers and duties of TBPC that relate to the following areas will be performed by TFC: charge and control of state buildings, grounds, or property; maintenance or repair of state buildings, grounds, or property; construction of a state building; purchase or lease of buildings, grounds, or property by or for the state; child care services for state employees; and surplus and salvage property. All other powers and duties of TBPC will be transferred to the Comptroller, including statewide procurement; training and compliance; statewide HUB program; travel procurement; fleet management; and support services.

Effective September 1, 2007, the name of the Texas Building and Procurement Commission has been changed to the Texas Facilities Commission. As of September 1, 2007, the name of Title 1, Part 5 of the *Texas Administrative Code* is the Texas Facilities Commission, but the rule numbers and names under the part will remain the same.

TRD-200703404

Effective: September 1, 2007

♦ ♦ ♦

Texas Facilities Commission

Notice of Agency Name Change

Through the enactment of House Bill 3560, 80th Legislature, 2007, the Governor and the Legislature have directed that the Texas Building and Procurement Commission (TBPC) divide its duties and responsibilities between its successor agency, the Texas Facilities Commission (TFC), and the Comptroller of Public Accounts (Comptroller). All powers and duties of TBPC that relate to the following areas will be performed by TFC: charge and control of state buildings, grounds, or property; maintenance or repair of state buildings, grounds, or property; construction of a state building; purchase or lease of buildings, grounds, or property by or for the state; child care services for state employees; and surplus and salvage property. All other powers and duties of TBPC will be transferred to the Comptroller, including statewide procurement; training and compliance; statewide HUB program; travel procurement; fleet management; and support services.

Effective September 1, 2007, the name of the Texas Building and Procurement Commission has been changed to the Texas Facilities Commission. As of September 1, 2007, the name of Title 1, Part 5 of the *Texas Administrative Code* is the Texas Facilities Commission, but the rule numbers and names under the part will remain the same.

TRD-200703409

Effective: September 1, 2007

♦ ♦ ♦

Texas Department of Agriculture

Rule Transfer

House Bill 2458, 80th Legislative Session, 2007, effective September 1, 2007, abolishes the Texas Structural Pest Control Board (Board) and transfers its respective powers, duties, functions, programs, and activities to the Texas Department of Agriculture (the Department). Under the bill, rules of the Board continue in effect as the rules of the Department until superseded by an act of the Department.

The Board's rules currently found in *Texas Administrative Code* (TAC), Title 22, Part 25, will be transferred and reorganized under TAC Title 4, Part 1, Chapter 7, Subchapter H.

The transfer will take effect on September 1, 2007.

Please refer to Figure: 22 TAC Part 25 to see the complete conversion chart.

Figure: 22 TAC Part 25

TRD-200703429

♦ ♦ ♦

Texas Structural Pest Control Board

Rule Transfer

House Bill 2458, 80th Legislative Session, 2007, effective September 1, 2007, abolishes the Texas Structural Pest Control Board (Board) and transfers its respective powers, duties, functions, programs, and activities to the Texas Department of Agriculture (the Department). Under the bill, rules of the Board continue in effect as the rules of the Department until superseded by an act of the Department.

The Board's rules currently found in *Texas Administrative Code* (TAC), Title 22, Part 25, will be transferred and reorganized under TAC Title 4, Part 1, Chapter 7, Subchapter H.

The transfer will take effect on September 1, 2007.

Please refer to Figure: 22 TAC Part 25, to see the complete conversion chart.

Figure: 22 TAC Part 25

TRD-200703445

♦ ♦ ♦

Figure: 22 TAC Part 25

Current Rules from Title 22, Part 25 Texas Structural Pest Control Board			Transferred to Title 4, Part 1 Texas Department of Agriculture Chapter 7. Pesticides Subchapter H. Structural Pest Control Service		
Chapter	**Section**	**Heading**	**Division**	**Section**	**Heading**
591		**General Provisions**	**1**		**General Provisions**
	§591.1	Purpose of the Board		§7.101	Purpose of the Board
	§591.2	Rule Making		§7.102	Rule Making
	§591.3	Suspension of Rules		§7.103	Suspension of Rules
	§591.4	Board Office		§7.104	Board Office
	§591.5	Board Meetings		§7.105	Board Meetings
	§591.6	Board Seal		§7.106	Board Seal
	§591.7	Board Records		§7.107	Board Records
	§591.8	Board Acceptance of Documents		§7.108	Board Acceptance of Documents
	§591.9	Board Administrative Hearings		§7.109	Board Administrative Hearings
	§591.10	Administrative Penalties		§7.110	Administrative Penalties
	§591.11	Determination of Administrative Penalties		§7.111	Determination of Administrative Penalties
	§591.12	Settlements		§7.112	Settlements
	§591.13	Public Comment		§7.113	Public Comment
	§591.21	Definition of Terms		§7.114	Definition of Terms
	§591.23	Historically Underutilized Businesses		§7.115	Historically Underutilized Businesses
593		**Licenses**	**2**		**Licenses**
	§593.1	Persons Required to Secure License		§7.121	Persons Required to Secure License
	§593.2	License Application		§7.122	License Application
	§593.3	Insurance Requirement		§7.123	Insurance Requirement
	§593.4	Resident Agent		§7.124	Resident Agent
	§593.5	Examinations		§7.125	Examinations
	§593.6	License Expiration and Renewal		§7.126	License Expiration and Renewal
	§593.7	Fees		§7.127	Fees
	§593.8	Loss of Certified Applicator or Business License Holder		§7.128	Loss of Certified Applicator or Business License Holder
	§593.9	Licensing of Persons with Criminal Backgrounds		§7.129	Licensing of Persons with Criminal Backgrounds
	§593.10	Licensing of Persons with Delinquent Student Loans		§7.130	Licensing of Persons with Delinquent Student Loans
	§593.11	Certified Noncommercial Applicator Restrictions		§7.131	Certified Noncommercial Applicator Restrictions
	§593.12	Right-of-way Certification		§7.132	Right-of-way Certification
	§593.21	Technician License Requirements		§7.133	Technician License Requirements
	§593.23	Continuing Education Requirements for Certified Applicators		§7.134	Continuing Education Requirements for Certified Applicators
	§593.24	Criteria and Evaluation of Continuing Education		§7.135	Criteria and Evaluation of Continuing Education

	§593.25	Provisional License for Louisiana and Mississippi Certified Structural Pest Control Applicators Affected by Hurricane Katrina		§7.136	Provisional License for Louisiana and Mississippi Certified Structural Pest Control Applicators Affected by Hurricane Katrina
595		**Compliance and Enforcement**	**3**		**Compliance and Enforcement**
	§595.1	License Display		§7.141	License Display
	§595.2	Employee Registration		§7.142	Employee Registration
	§595.3	Employee Supervision		§7.143	Employee Supervision
	§595.4	Pest Control Use Records		§7.144	Pest Control Use Records
	§595.5	Contracts		§7.145	Contracts
	§595.6	Pest Control Sign		§7.146	Pest Control Sign
	§595.7	Consumer Information Sheet		§7.147	Consumer Information Sheet
	§595.8	Responsibilities of Unlicensed Persons for Posting and Notification		§7.148	Responsibilities of Unlicensed Persons for Posting and Notification
	§595.10	Inspections		§7.149	Inspections
	§595.11	Schools		§7.150	Schools
	§595.12	Misapplications		§7.151	Misapplications
	§595.13	Advertising		§7.152	Advertising
	§595.14	Reduced Impact Pest Control Service		§7.153	Reduced Impact Pest Control Service
	§595.15	Incidental Use Situation Fact Sheet		§7.154	Incidental Use Situation Fact Sheet
	§595.17	Incidental Use For Schools		§7.155	Incidental Use For Schools
	§595.21	Entry and Access		§7.156	Entry and Access
	§595.22	Investigation of Complaints		§7.157	Investigation of Complaints
	§595.23	Investigation Reports		§7.158	Investigation Reports
597		**Unlawful Acts and Grounds for Revocation**	**4**		**Unlawful Acts and Grounds for Revocation**
	§597.1	Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses		§7.161	Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal To Examine, Refusal To Issue or Renew Licenses
	§597.2	Suspension or Revocation		§7.162	Suspension or Revocation
	§597.3	Unlawful Acts		§7.163	Unlawful Acts
599		**Treatment Standards**	**5**		**Treatment Standards**
	§599.1	Termite Control		§7.171	Termite Control
	§599.2	Subterranean Termite Post Construction Treatments		§7.172	Subterranean Termite Post Construction Treatments
	§599.3	Subterranean Termite Pre-Construction Treatments		§7.173	Subterranean Termite Pre-Construction Treatments
	§599.4	Termite Treatment Disclosure Documents		§7.174	Termite Treatment Disclosure Documents
	§599.5	Inspection Procedures		§7.175	Inspection Procedures
	§599.6	Real Estate Transaction Inspection Reports		§7.176	Real Estate Transaction Inspection Reports
	§599.7	Posting Notice of Inspection		§7.177	Posting Notice of Inspection
	§599.11	Structural Fumigation Requirements		§7.178	Structural Fumigation Requirements

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §163.3, Objectives. This proposed review is conducted in accordance with the Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule in the *Texas Register.*

Cross Reference to Statutes: Texas Government Code, §492.013 and §509.003.

TRD-200703392
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: August 6, 2007

♦ ♦ ♦

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of 19 TAC Chapter 232, General Certification Provisions, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 232 are organized under the following subchapters: Subchapter A, Types and Classes of Certificates Issued, and Subchapter B, Certificate Renewal and Continuing Professional Education Requirements.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 232 continue to exist.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200703390
Raymond Glynn
Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
Filed: August 6, 2007

♦ ♦ ♦

The State Board for Educator Certification (SBEC) proposes the review of 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 233 continue to exist.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200703391
Raymond Glynn
Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
Filed: August 6, 2007

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §82.53(b)

Tier	Criteria	Total Inspection Frequency (includes both periodic and risk-based inspections)
(1) Tier 1	Barbershops and specialty shops having: (A) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) significant or repeated violation(s) relating to unlicensed practice.	Once each year
(2) Tier 2	Barbershops and specialty shops having: (A) serious or repeated violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) serious or repeated violation(s) relating to unlicensed practice.	Twice each year
(3) Tier 3	(A) Barbershops and specialty shops having: (i) repeated, serious violations of sanitation rules determined by the department to pose a threat for the spread of infectious or contagious disease; or (ii) repeated, serious violations related to unlicensed practice. (B) Barber schools having: (i) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; (ii) significant or repeated violation(s) relating to unlicensed practice; (iii) violation(s) relating to the improper awarding of hours to students; or (iv) violation(s) relating to compromised security of department examinations.	Four times each year

Figure: 16 TAC §82.120(f)

CURRICULUM FOR THE HAIR BRAIDING SPECIALTY CERTIFICATE OF REGISTRATION 35 HOURS		
(1)	Hair Braiding - Technical Skills:	11 hours
	(A) tools and equipment: types of combs, yarn, thread (B) types and patterns of braids: twists, knots, multiple strands, corn rows, hair locking (C) artificial hair and materials for extensions (D) trimming of artificial hair only as applicable to the braiding process (E) braid removal and scalp care (F) client education: maintenance	
(2)	Health and Safety/Law and Rules:	16 hours
	(A) Texas health and safety law and rules (B) bacteriology: sanitation, and disinfection (C) viruses, diseases, disorders: transmission, control, recognition (D) Texas license requirements - individuals and salons (E) Texas professional responsibility requirements - individuals and salons (F) Texas Occupations Code, Chapters 1601 and 1603 (laws) (G) 16 Texas Administrative Code, Chapter 82 (rules)	
(3)	Hair Analysis and Scalp Care:	8 hours
	(A) hair and scalp disorders and diseases: dandruff, alopecia, fungal infections, infestations, infections (B) hair structure, composition, texture (C) hair growth patterns, styles, textures (D) effect of physical treatments on the hair	

Figure: 16 TAC §82.120(g)

CURRICULUM FOR THE HAIR WEAVING SPECIALTY CERTIFICATE OF REGISTRATION 300 HOURS	
(1) Hair weaving:	150 hours
Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing by hand of hair ends or by using mechanical equipment	
(2) Shampooing client, weft and extensions:	50 hours
Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	
(3) Professional practices:	40 hours
Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	
(4) Anatomy and physiology-scalp:	30 hours
Major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	
(5) Chemistry in hair weaving:	10 hours
Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	
(6) Sanitation and safety measures:	10 hours
Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	
(7) Safety measures: client protection	10 hours

Figure: 16 TAC §82.120(h)

CURRICULUM FOR A BARBER REFRESHER COURSE 300 HOURS			
(1)	theory instruction in Texas barber law and rules		10 hours
(2)	instruction in practical work, to include		290 hours
	(A)	Haircutting	160
	(B)	Permanent waving and chemical application	75
	(C)	styling, curling, and blow-drying	55

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Waiver of Late Fees

Texas Administrative Code, Title 4, Part 1, Chapter 1, §1.56(c)(2)(B)(vi), provides that the Texas Department of Agriculture (TDA) may, by written notice published in the *In Addition* section of the *Texas Register* waive late fees for a class of licensees if, due to malfunctions in the renewal generation process, a class of license renewals are mailed less than 30 days prior to the normal expiration date for that class of licensees. In accordance with §1.56(c)(2)(B)(vi), TDA hereby provides notice that it is waiving late fees for 2,105 accounts of various types whose renewal notices were mailed less than 30 days prior to the expiration date due to a data transmission error that occurred during the printing of the renewal notices for accounts expiring on or around July 31, 2007. This late fee waiver is effective beginning August 1, 2007, and will be valid for the affected accounts until September 1, 2007.

Please contact Tim Speer at (877) 542-2474 if you have any questions regarding this notice.

TRD-200703430
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: August 7, 2007

♦ ♦ ♦

Office of the Attorney General

Notice of Intent to Amend and Extend Consultant Services Contract

The Child Support Division (CSD) of the Office of the Attorney General (OAG) currently has a consulting services contract with Deloitte Consulting, LLP of 400 West 15th Street, Suite 1700, Austin, Texas 78701. Deloitte Consulting is providing consulting services related to:

• Assessing Child Support Division (CSD) business processes

• Recommending how CSD processes should change to meet the vision for the future of child support

• Recommending technologies and/or services that could best support future business processes

• Recommending a new organization required to support future business processes

• Reviewing the existing business strategy and review and identify metrics to support that strategy

• Recommending a plan or roadmap to implement new processes, technologies and services

• Planning and possibly overseeing the implementation of the new processes, services, and supporting technology

The contract was executed on January 22, 2007, and will expire on August 31, 2007, with options to extend. The original contract amount is for $1,790,000.00.

Deloitte Consulting was selected as the consultant for this project after a competitive process whereby the OAG evaluated four proposals that were submitted as a result of the invitation to submit proposals that was published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 8019).

The OAG intends to extend this consulting services contract and amend it to describe Deloitte Consulting's role after submitting Business Process Redesign (BPR) recommendations. Pursuant to Texas Government Code, Chapter 2254, Subchapter B, before extending and amending the contract with Deloitte Consulting, the OAG publishes this notice and invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

SCOPE OF SERVICES:

To provide "Development and Implementation Continuity Assurance" by preparing, planning, developing and deploying the management and technical infrastructure necessary to implement the recommendations made by Deloitte Consulting pursuant to its consulting contract regarding new processes, organizational changes, performance metrics and supporting technologies identified during the initial term of the contract.

FINDING OF FACT:

The OAG has submitted a request to the Budget, Planning & Policy Division of the Governor's Office for a Finding of Fact that the requested consulting services are necessary. Extension of the contract or execution of a new contract is contingent upon receipt of this Finding of Fact.

CRITERIA FOR SELECTION:

The OAG intends to negotiate with Deloitte Consulting the extension and amendment to its consulting services contract to include this scope of work, unless the OAG receives a better offer for the desired consulting services. The OAG will make its selection based on demonstrated competence, knowledge, and qualifications, considering the reasonableness of the proposed fees for consulting services.

SUBMITTING OFFERS:

Any consultant submitting an offer in response to this notice must provide the following with the offer:

(1) The consultant's legal name and address

(2) A description of the consultant's experience in the business process redesign field

(3) Information regarding the qualifications, education, and experience of the team(s) proposed to provide these consulting services

(4) The price to perform the entire scope of services

(5) The earliest date on which the consultant could begin to provide services

(6) A list of three references, including any Child Support customers for which the consultant has performed services

(7) A previous or sample BPR implementation plan that represents the consultant's work

(8) A completed Historically Underutilized Businesses subcontracting plan (the forms can be found at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-subcontracting-plan)

(9) The following completed forms (available from the OAG Contact identified below): Certification Regarding Lobbying, Consultant Assurances with Certification, and Consultant Release of Liability (to References)

In order to be considered for this Consulting Services contract, a Response should be submitted, in accordance with the instructions in this notice to the OAG by 2:00 p.m. **CST** on September 7, 2007.

Telephone and facsimile responses will not be accepted. Responses may be submitted by mail to the mailing address listed below; or may be hand delivered to the physical address listed below.

Mailing Address:

Office of the Attorney General

Child Support Division

Attn: Ron Pigott, Assistant Attorney General

P.O. Box 12017

Austin, TX 78711-2017

Physical Address:

Office of the Attorney General

Child Support Division

Attn: Ron Pigott, Assistant Attorney General

5500 E. Oltorf St., Room 375

Austin, TX 78741-7400

E-mail: Ron.Pigott@oag.state.tx.us

QUESTIONS:

Questions concerning this notice and invitation should be submitted in writing or by email to the point of contact listed above.

OAG RIGHTS:

The OAG reserves the right to accept or reject any or all offers submitted. The OAG is under no obligation to execute any contract on the basis of this notice. The OAG will not pay for any costs incurred by any entity in responding to this notice.

For questions regarding this notice, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200703442
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 8, 2007

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 27, 2007, through August 2, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 8, 2007. The public comment period for this project will close at 5:00 p.m. on September 7, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: MB Harbor, Ltd.; Location: The project is located at the intersection of the Genco outfall canal and Clear Lake. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 301075; Northing: 3270147. Project Description: This public notice is for modifications to the proposed project plans included in a previous Public Notice, dated 5 April 2007. The applicant proposes to discharge fill material into 0.012 acre of adjacent wetlands and 0.35 acre of jurisdictional open water of Clear Lake to construct a marina and residential community. The project will also include 4.08 acre of impact to jurisdictional open water resulting from dredging/excavation activities. The project involves the construction of 79 single family homes sites with waterway access, 21 non-marina lots, and a commercial/retail area as well as one acre of parklands and open spaces.

The proposed project site consists of a 37.7-acre parcel east of the canal, a 9.19-acre parcel north of the canal, a 2.19-acre tract west of Marina Way, and a 14.04-acre open water area comprised of the Glen Cove Marina and existing canal.

Operations associated with the construction of the project will include the dredging of an existing 3,635-linear-foot cooling channel from the mouth of the existing Glen Cove channel to FM 2094, as well as 2,119 linear feet of the channel within Clear Lake. Approximately 16,380 cubic yards of material will be dredged (mechanical or hydraulic, depending on equipment availability) from the bottom and sides of the existing jurisdictional canal from the downstream side of the Seminole Bridge out into Clear Lake. Approximately 7,105 cubic yards of material will be dredged from Seminole Bridge to FM 2094; and 145,000 cubic yards of material will be excavated to create the new canal. The 7,105 cubic yards of dredged material from the existing canal upstream of the Seminole Drive Bridge and the 16,380 cubic yards of dredged material from the existing canal between Seminole Drive Bridge and the Clear Creek Channel will be dredged using either a dragline or a hydraulic dredge, depending upon the availability of equipment. The dredged material and material excavated to construct the new canal will be placed within the bermed area subsequent to dewatering activities and spreading of the sediments on the proposed lots. The dredged material from future maintenance dredging activities will be placed on a site located south of FM 517 just east of its intersection with the Highway 35 by-pass.

After the dredging and dewatering operations are complete, the existing channel upstream of Seminole Drive will be widened. Approximately 50,515 cubic yards of upland soils will be excavated from the sides of the existing canal between FM 2094 and the Seminole Drive Bridge and will be placed on all of the designated fill sites. Soils excavated from the east side of the existing canal and from the new canal will be incorporated with the dewatered dredged material and spread on the larger tract to the designated elevations. Upland soils excavated from the west side of the existing canal will be spread on the two northern tracts to the designated elevations.

Based on the Corps of Engineers (Corps) jurisdictional determination D-17791, the two smaller tracts north of the canal have been verified to not contain any waters of the United States, including adjacent wetlands. The larger tract was determined to contain adjacent wetlands; however, these wetlands were not verified by the Corps to determine the exact extent and location of waters of the United States within the project site. A second determination on the property confirmed that the existing canal is a navigable water of the United States.

The applicant is proposing to offset the jurisdictional impacts of the project by opening the upper reach of the cooling canal to tidally influenced conditions and enhancing the existing canal after the removal of the existing water control structure. A second canal will be excavated to the east, joining with the existing canal near the lift station. The amount of open water that will be created in the two canals is 4.54 acres Water quality functions in the two upper channels will be enhanced by installing 5,800 linear feet of bulkhead along the shoreline and by creating 1.37 acres of wetland marsh (vegetation) benches instead of the 0.39 acre proposed in the initial public notice.

The marsh benches will be compensatory mitigation for impacts to jurisdictional waters and will be designed into the channel cross sections as part of the channel widening phase and the construction of the bulkheads. Instead of a four-foot-wide marsh bench with 3:1 slopes on one side of the canal, the applicant will create a ten-foot-wide bench on both sides of the canals within the intertidal zones of Clear Lake. The tops of the benches will be planted with smooth Cordgrass (Spartina alterniflora) sprigs at an initial planted spacing sufficient to achieve coverage of the intertidal benches. To assist with dissolved oxygen levels in the water columns of the upper channels, the applicant originally proposed a pumping and aeration system will be installed to circulate waters between the upper reaches of the existing and new canals. In addition to the pumping and aeration system, the applicant is proposing to install a 24-inch storm water pipe upstream of the proposed water control structure to bring fresh water to the most eastern channel. The plan was modified to reduce the number of boat ramps from three to one. In addition, bio-swales are proposed to be installed at storm water discharge points into the canal. These freshwater bio-swales will create an additional 0.168 acre of freshwater wetlands within the project site. To summarize, the mitigation will consist of the creation of 5.91 acres of additional jurisdictional areas. Of this total acreage, 4.54 acres of jurisdictional open water will be created during the new canal construction and the removal of the existing dam structure. In addition to the creation of jurisdictional open water, 1.37 acres of wetlands will be created by constructing vegetated benches along the sides of the canals. An additional 0.168 acres of freshwater wetlands (bio-swales) will be created to filter water from the development before it enters the canals. CCC Project No.: 07-0258-F1; Type of Application: U.S.A.C.E. permit application #SWG-2006-2532 (Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Tortuga Harbor Planning, LLC; Location: The project is located at North Padre Island on the west side of Packery Channel, north of the State Highway 361 Bridge, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: CRANE ISLANDS SW, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 676000; Northing: 3056100. Project Description: The applicant proposes to construct a marina with single family homes, multi-family units, and retail/commercial space within an approximate 54-acre tract of land adjacent to Corpus Christi Bay and Packery Channel. The marina would include a 10-acre harbor with an access channel, marina area, ships store with fuel, dry stack boat storage, and 175 floating dock boat slips. Boat slips would be designed for double occupancy, vary in length from 30 feet to 40 feet, vary in width from 24 feet to 36 feet, and contain a central mooring pile. Walkways to the slips would be 6 to 8 feet in width and finger piers on either side of the slips would be 4 feet in width.

A total of 196,031 cubic yards of material would be mechanically excavated to construct a harbor/marina area with a final depth of -6 feet mean high water. Approximately 1,278 cubic yards of material would be mechanically dredged from a 0.39-acre area that begins at the shoreline and extends out to Packery Channel. Approximately 0.17 acre of Packery Channel shoreline and shallow water zone would be converted to deeper water to form the channel entrance to the harbor. All excavated and dredged material would be placed in on-site uplands and used as fill for the remainder of the project. Approximately 0.11 acre of tidal shoreline would be filled for construction of a sheetpile breakwater structure to protect the property and the wetlands along the shoreline. The breakwater would contain open cuts in the sheet pile to allow tidal water exchange to the wetlands behind the breakwater. There would be a total of 32 feet of openings along the southern breakwater and 46 feet of openings in the northern breakwater. In addition to the 0.11 acre of tidal shoreline that would be filled, approximately 0.07 acre of brackish water wetlands would be filled for contouring and grading near a proposed drainage swale, and 0.17 acre of tidal wetland would be excavated for the entrance channel. Approximately 0.337 acre of freshwater wetlands would be filled for the marina and dry stack boat storage, with 0.55 acre of wetlands excavated for the harbor, and 0.98 acre of wetlands filled for the retail facilities. As compensation for these impacts, the applicant proposes to create 1.08 acres of shallow water marsh behind the proposed breakwater and inside the harbor, restore a breach in Shamrock Island using sand, and protect 1.33 acres of existing tidal wetlands adjacent to the proposed harbor entrance channel by construction of the proposed breakwater. A Habitat Conservation and Management Plan would protect 6.22 acres of oak brush habitat and 2.41 acres of tidal to brackish marsh wetlands (including existing and created wetlands). Best management practices to be used at the project site include storm water sediment catch traps at all storm water outfalls, silt fencing around all construction areas and all protected wetland areas, mulch and hay bales to control rainfall runoff and prevent erosion, and construction access roads would be constructed of rock road bed. In addition, a drainage swale and sediment catch trap would also be constructed to maintain storm water drainage into the existing protected tidal and brackish wetland along Packery Channel. The restoration of the breach in Shamrock Island would include the placement of sand and shell hash into an area that is 100 feet long and 30 feet wide. Approximately 333 cubic yards of sand would be placed to a depth of 3 feet in the breach, and approximately 55 cubic yards of shell hash would be placed over the sand to a depth of 0.5 feet. The sand and shell hash would be brought from off-site sources and small work barges, and board mats would be used to place the material into the breach. CCC Project No.: 07-0259-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-925 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: D H Palacios Development, LP; Location: The project is located along Turtle Bay and Tres Palacios Bay at the former Camp Hulen site, near Palacios, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Turtle Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 768649; Northing: 3176170. Project Description: The proposed "Beachside" development is a master-planned waterfront residential/resort community to be located on a portion of the former Camp Hulen military facility near Palacios, Texas. The applicant proposes to construct a community pedestrian pier, an inland marina, inland canals, and two access channels to Tres Palacios Bay and jetties that would protect the channels from sedimentation.

The community pedestrian pier would be constructed in the southwest portion of the site for nature viewing. The proposed pier measurements are 8 by 200 feet with a 10-by-46-foot T-head.

Two channels (comprising 5.74 acres of bay bottom) would be either mechanically or hydraulically dredged (20,000 cubic yards) into Tres Palacios Bay. The east channel would be approximately 130 feet wide by 1,300 feet long and the west channel would be approximately 130 feet wide by 1,200 feet long. To protect the channels from sedimentation, two jetties (timber breakwaters filled with crushed concrete) would be placed along the boundary of each access channel. Approximately 6,700 cubic yards of fill would be placed into 2.09 acres of bay bottom during the construction of the jetties and toe protection. If the channels are mechanically dredged, the excavated material would be placed on a barge and off-loaded on land to be used as fill for the subdivision on uplands. If hydraulic dredging is used, the material would be transported by a 6,000-foot pipeline to the existing Matagorda County Navigation District Number 1 (MCND#1)/U.S. Army Corps of Engineers (Corps) Dredge Material Placement Area (DMPA) Number 15. After decanting the dredged material, it would be mechanically removed from the DMPA and used as fill for the proposed subdivision on uplands.

A 20-acre small craft marina and inland canals would be constructed from uplands. These inland features would be connected to Tres Palacios Bay by the aforementioned proposed channels. The applicant proposes that lot owners adjacent to the inland canals would be allowed to construct docks with specific design requirements behind their homes. However, land owners adjacent to Tres Palacios would not be allowed to construct individual docks or piers.

Maintenance dredging is anticipated to occur every 7 to 10 years after project completion. The applicant proposes to hydraulically dredge approximately 20,000 cubic yards per maintenance event. The maintenance dredged material would be transported to the existing MCND#1/Corps DMPA#15. If the applicant is unable to use the aforementioned facility, an approximate 15-acre DMPA would be constructed north of the Beachside development in uplands. No impacts to wetlands, seagrass beds, or oyster beds are proposed. CCC Project No.: 07-0260-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-412 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200703389

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: August 6, 2007

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapters 403, 2155, and 2156, §2155.001 and §2156.121, Texas Government Code and Chapter 2305, §2305.038, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces the issuance of its Request for Proposals (RFP #180c) from qualified, independent firms and institutions to provide technical assistance, energy outreach and related services (Services) for the Texas Energy Partnership Program (Program). One or more successful respondents will assist Comptroller in providing technical energy assistance, conducting energy education outreach and training, and related services, to local governments as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, on or about September 25, 2007, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, August 17, 2007, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. (CZT), Friday, August 17, 2007.

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, August 31, 2007. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on September 7, 2007, or as soon thereafter as practical, on the ESBD at: http://esbd.tbpc.state.tx.us. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Non-Mandatory Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, September 14, 2007. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 17, 2007; Non-Mandatory Letters of Intent and Questions Due - August 31, 2007, 2 p.m. CZT; Official Questions and Responses posted - September 7, 2007 (or as soon thereafter as practical); Proposals Due - September 14, 2007, 2 p.m. CZT; Contract Execution - September 25, 2007, or as soon thereafter as practical; Commencement of Project Activities - September 25, 2007, or as soon thereafter as practical.

TRD-200703446

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 8, 2007

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/13/07 - 08/19/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/13/07 - 08/19/07 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 08/01/07 - 08/31/07 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 08/01/07 - 08/31/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200703416
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 7, 2007

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning the Texas Science, Technology, Engineering, and Math (T-STEM) Academies - Startup Cycle 3 Grants

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-122 from eligible school districts and open-enrollment charter schools. An eligible school district or open-enrollment charter school shall serve a student population of greater than 40 percent economically disadvantaged students and shall have received a rating of *Exemplary*, *Recognized*, or *Academically Acceptable* under the 2007 state accountability rating system. An eligible school district or open-enrollment charter school shall also demonstrate how it will meet all of the requirements in this RFA for opening a Texas Science, Technology, Engineering, and Math (T-STEM) Academy no later than the fall of 2008. A T-STEM Academy shall (1) be an autonomous school located on a stand-alone facility or sharing a facility with an existing school; (2) serve Grades 6-12 or Grades 9-12 with an active relationship with the feeder middle school(s); (3) be small, serving approximately 100 students per grade; (4) be open enrollment, hosting lotteries for admission; (5) serve a student population of greater than 50 percent economically disadvantaged students; (6) be located on a new campus or be located on a campus that exhibited characteristics that strongly correlate with high school dropout rates (including, but not limited to, high 9th grade retention rates) during the 2004-2005, 2005-2006, and 2006-2007 school years; (7) not share a facility with a campus that received a rating of *Academically Unacceptable* under the state accountability rating system in 2005, 2006, or 2007; and (8) follow all requirements and indicators outlined in the RFA and in the T-STEM Academy Design Blueprint included as an attachment to the RFA. Campuses receiving funding from the TEA, the Communities Foundation of Texas (CFT), or the Bill & Melinda Gates Foundation (BMGF) under any of the following grant programs are not eligible to receive funds under this grant program: a TEA Texas High School Redesign and Restructuring Grant, Cycle 2 or Cycle 3; a TEA or CFT Early College High School Grant; a TEA or CFT T-STEM Academy Grant; a CFT Redesigned High School Grant; a CFT New Schools Grant; or a BMGF Redesign Grant.

Description. The purpose of T-STEM Academies is to increase student achievement by engaging students in and exposing students to innovative science and mathematics instruction while simultaneously acting as demonstration sites to inform mathematics and science teaching and learning statewide. To that end, every academy will provide a rigorous, well-rounded education with outstanding science and mathematics instruction, integrating technology across the curriculum. The goals of this program for the T-STEM Academies are to (1) develop the nation's leading innovation economy workforce by aligning high school courses, postsecondary education, and economic development activities; (2) establish T-STEM Academies in high-need areas across the state that will prepare Texas high school graduates from diverse backgrounds to pursue careers in STEM-related fields; and (3) establish a statewide best-practices network for STEM education to promote broad dissemination and adoption of promising practices from the initiative and improve mathematics and science performance for students across Texas.

Dates of Project. The T-STEM Academies - Startup Cycle 3 Grants will be implemented during the 2008-2009 and 2009-2010 school years. Applicants should plan for a starting date of no earlier than March 1, 2008, and an ending date of no later than May 31, 2010. Schools districts or open-enrollment charter schools selected will be required to open a T-STEM Academy no later than the fall of 2008.

Project Amount. A total of approximately $3,045,000 is available for funding the T-STEM Academies - Startup Cycle 3 Grants. Each project will receive a maximum of $480,000 for a campus serving Grades 9-12, or $840,000 for a campus serving Grades 6-12, for the 2008-2009 and 2009-2010 school years. The funding will be available in two phases. For the Planning Phase, each project may receive a maximum award amount of $80,000. Upon approval of the project's Academy Design Proposal, an additional amount not to exceed $400,000 for a campus serving Grades 9-12, or $760,000 for a campus serving Grades 6-12, will be made available for the Implementation Phase. This project is funded 100 percent from general revenue funds appropriated by the state legislature.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-07-122 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

Further Information. For clarifying information about the RFA, contact Vicki Logan, Division of Discretionary Grants, TEA, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, October 16, 2007, to be considered for funding.

TRD-200703454
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 8, 2007

♦ ♦ ♦

Request for eGrants Applications Concerning Investment Capital Fund Grant Program, Cycle 17, School Years 2007-2008 and 2008-2009

Eligible Applicants. The Texas Education Agency (TEA) is requesting eGrants applications under Request for Applications (RFA) #701-07-115 from school districts and open-enrollment charter schools on behalf of an individual campus. A multi-campus school district or open-enrollment charter school may submit more than one application; however, each application must address strategies and activities for a single campus and its community. The school must have demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions at the school by entering into a partnership with school staff; parents of students at the school; community and business leaders; school district officers; and a nonprofit community-based organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards. Campuses currently participating in the 2006-2007 Investment Capital Fund Grant Program, Cycle 16 (SAS #ICFGAA07) are not eligible to participate in this project.

Description. The purposes of the Investment Capital Fund are to (1) assist eligible public schools to implement practices and procedures consistent with deregulation and school restructuring so as to improve student achievement, and (2) help schools identify and train parents and community leaders who will hold the school and the school district accountable for achieving high academic standards. The primary objective of the Investment Capital Fund grant program is to improve academic performance through the following program goals: train school staff, parents, and community leaders to understand academic standards; develop and implement effective strategies to improve student performance; organize a large constituency of parents and community leaders who will hold the school and school district accountable for achieving high academic standards; and engage in ongoing planning to help ensure the success of the grant program.

Dates of Project. The Investment Capital Fund Grant, Cycle 17, will be implemented during the 2007 - 2008 and 2008 - 2009 school years. Applicants should plan for a starting date of no earlier than March 1, 2008, and an ending date of no later than August 31, 2009.

Project Amount. Funding will be provided for approximately 89 projects. Each project will receive a maximum of $50,000 for the grant period.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Obtaining Access to the eGrants Application. This grant is available only through eGrants and may not be submitted through any other means. A Texas Education Agency Secure Environment (TEA SE) user name and password are required for each user of eGrants. To request a TEA SE username and password, or for information on how to apply for eGrants access once a TEA SE account has been established, go to http://www.tea.state.tx.us/opge/egrant/index.html. Requestors will receive a username and password via email within approximately two weeks.

To access the information and requirements for this grant, enter the TEA Grant Opportunities webpage at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the program/RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Grant Writer's Designation Form. As part of the TEA eGrants system, the Grant Writer Designation Form has been introduced as a mechanism for identifying users who will have access to view and complete the Investment Capital Fund, Cycle 17, Grant Application. Due to the competitive nature of some grants, certain users will be designated to have access to a grant application by the superintendent or the organization's authorized official. Only the superintendent or the organization's authorized official may complete the form, and he or she must denote agreement with the authorization statement on the bottom of the form before the schedule is complete. The information submitted on the form is considered to be binding, and only the users identified on the form will have access to the grant application. The organization must select the eligible campuses so that the designated individuals will have access to the grant application. All applicants must complete and submit the Grant Writer Designation Form, available at http://maverick.tea.state.tx.us:8080/Guidelines/Template%20Forms/GWD%20Form.pdf. The form will close 10 to 15 days before the deadline for receipt of applications, and access to the application will not be available if the form has not been completed and submitted.

Deadline for Receipt of eGrants Applications. The eGrants application will be available on or about Friday, August 17, 2007. The eGrants application must be certified and submitted by the official authorized to enter the applicant organization into a legally binding contractual agreement by 5:00 p.m. (Central Time), Thursday, September 27, 2007, to be considered for funding.

Further Information. For clarifying information about this notice or the RFA, contact Carlos Garza, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQ) at http://burleson.tea.state.tx.us/GrantOpportunities/forms/.

TRD-200703444
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 8, 2007

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 17, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 17, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Airborn, Inc.; DOCKET NUMBER: 2007-0835-IHW-E; IDENTIFIER: RN100647551; LOCATION: Addison, Dallas County, Texas; TYPE OF FACILITY: electrical connector manufacturing; RULE VIOLATED: 30 Texas Administrative Code (TAC) §335.2(b), by failing to send the waste to an authorized facility for disposal/management; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Severiano M. Anguiano; DOCKET NUMBER: 2007-0464-PST-E; IDENTIFIER: RN101802353; LOCATION: Junction, Kimble County, Texas; TYPE OF FACILITY: property with underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Bond-Coat, Inc.; DOCKET NUMBER: 2007-0667-AIR-E; IDENTIFIER: RN105193411; LOCATION: Odessa, Midland County, Texas; TYPE OF FACILITY: oilfield drill pipe custom coating plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and Texas Health & Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain a permit prior to construction or operation of a regulated operation; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(4) COMPANY: Channel Shipyard Company, Inc.; DOCKET NUMBER: 2007-0701-AIR-E; IDENTIFIER: RN100218429; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: barge cleaning operation; RULE VIOLATED: 30 TAC §115.121(a)(1) and §115.122(a)(1)(A) and THSC, §382.085(a) and (b), by failing to operate the thermal oxidizer properly and control a vent gas stream containing benzene; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-0322-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §115.722(c)(1), Air Permit Number 37063, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(2)(D) and THSC, §382.085(b), by failing to report the date of the January 15, 2006, incident correctly in the emissions event notification submitted to the TCEQ; and 30 TAC §101.20(1) and §116.115(c), Air Permit Number 1504A, Special Condition Numbers 1 and 11.B, 40 Code of Federal Regulations (CFR) §60.18(c), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $60,283; Supplemental Environmental Project (SEP) offset amount of $30,141 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2007-0699-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O-01978, Special Terms and Conditions 6A, Air Permit Number 18104, Special Condition 1, and THSC, §382.085(b), by failing to comply with the volatile organic compound (VOC) maximum allowable emission rate of 0.22 pounds per hour (lbs/hr) for the vacuum system condenser outlet; 30 TAC §116.115(c) and §122.143(4), FOP

Number O-01978, Special Terms and Conditions 6A, Air Permit Number 20567, Special Condition 6E, and THSC, §382.085(b), by failing to equip two open-ended lines and valves with a cap, blind flange, plug, or second valve; 30 TAC §122.143(4), FOP Number O-01978, Special Terms and Conditions 3A(iv)(1), and THSC, §382.085(b), by failing to perform quarterly visible emissions observations on a natural gas-fired heater; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01978, General Condition, and THSC, §382.085(b), by failing to report deviations on the semi-annual deviation report; PENALTY: $31,964; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2007-0672-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §111.111(a)(1)(A) and §116.715(a), Permit Number 18287, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $70,400; Supplemental Environmental Project (SEP) offset amount of $35,200 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2007-0729-IWD-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03424, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(1) and TPDES Permit Number 03424, 24-Hour Acute Biomonitoring Requirements, by failing to comply with the semi-annual reporting requirements; PENALTY: $2,880; Supplemental Environmental Project (SEP) offset amount of $1,152 applied to Audubon Society-Tyrrell Park and Cattail Marsh Habitat Improvement; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Harris County Municipal Utility District No. 286; DOCKET NUMBER: 2007-0586-MWD-E; IDENTIFIER: RN102944030; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13020001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permit effluent limits; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Hull Fresh Water Supply District; DOCKET NUMBER: 2007-0664-MWD-E; IDENTIFIER: RN102094729; LOCATION: Liberty County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and (5), TPDES Permit Number 13544002, Operational Requirements Number 1, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the collection system; 30 TAC §305.125(9) and TPDES Permit Number 13544002, Monitoring and Reporting Requirements, Noncompliance Notification Number 7, by failing to submit noncompliance notifications for all unauthorized discharges from the collection system; and 30 TAC §319.5(b) and TPDES Permit Number 13544002, Monitoring and Reporting Requirements, Self-Reporting Number 1, by failing to collect effluent samples at the required frequency; PENALTY: $22,425; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Lucite International, Inc.; DOCKET NUMBER: 2007-0750-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), FOP Number O-01437, General Conditions, Special Condition 2(1) and 12, Air Permit Number 19005/PSD-TX-753, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $3,050; Supplemental Environmental Project (SEP) offset amount of $1,220 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2007-0586-MLM-E; IDENTIFIER: RN100238898; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum storage; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), FOP Number O-00357, General Terms and Conditions and Special Condition 12, Air Permit Number 56286, Special Condition 4, and THSC, §382.085(b), by failing to maintain records of the weight percentage Benzene content in the gasoline loaded on each barge; 30 TAC §116.115(b)(2)(E)(i) and (c) and §122.143(4), FOP Number O-00357, General Terms and Conditions and Special Condition 12, Air Permit Number 56286, General Condition 7 and Special Condition 3, and THSC, §382.085(b), by failing to maintain the hourly throughput loading records; 30 TAC §116.115(c) and §122.143(4), FOP Number O-00357, General Terms and Conditions, Air Permit Number 56286, Special Condition 8, 40 CFR §61.305(h), and THSC, §382.085(b), by failing to maintain records of leak tests performed; 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to obtain authorization for hydrogen sulfide emissions; 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to obtain authorization for the emissions associated with the sumps; 30 TAC §122.222(k)(2) and THSC, §382.085(b), by failing to revise FOP Number O-00357 when Tank 1546 was changed from an internal floating roof to external floating roof as reported on the deviation report; 30 TAC §335.4(1), by failing to properly collect and handle industrial solid waste; and 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(5)(D), FOP Number O-00357 General Terms and Conditions, and THSC, §382.085(b), by failing to report deviations on the semi-annual deviation report; PENALTY: $27,976; Supplemental Environmental Project (SEP) offset amount of $11,190 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Post Oak Development of Texas, Inc.; DOCKET NUMBER: 2007-0762-PWS-E; IDENTIFIER: RN103172078; LOCATION: Medina County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q), by failing to issue a boil water notification; 30 TAC §290.46(e)(2)(A), by failing to insure that all new or repaired water distribution facilities are not placed into service without the prior guidance and approval of a licensed water works operator; 30 TAC §290.42(e)(4)(C), by failing to provide an adequate ventilation for all enclosures in which gas chlorine is being stored or fed; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit; PENALTY: $744; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Red River Redevelopment Authority; DOCKET NUMBER: 2007-0711-PWS-E; IDENTIFIER: RN100224104; LOCATION: Bowie County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4), Agreed Order Docket No. 2004-0968-PWS-E, Ordering Provision Number 2, and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes; and 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: Bobby G. Rowland Homes, Inc. dba Rowland & Donnell Homes; DOCKET NUMBER: 2007-0861-WQ-E; IDENTIFIER: RN104016746; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES General Permit Number TXR150000 Part III Section F(2)(a)(ii), (v), and 3(b), by failing to properly install and maintain structural controls; and 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES General Permit Number TXR150000 Part III Section F(2)(a)(iv), by failing to remove accumulations of sediment that had escaped from the construction site; PENALTY: $3,575; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(16) COMPANY: Sparta Oaks Water Corporation; DOCKET NUMBER: 2007-0669-PWS-E; IDENTIFIER: RN101456556; LOCATION: Bell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(4), by failing to obtain a purchase water contract; 30 TAC §290.46(f)(2), by failing to provide water system records to be reviewed at the time of the investigation; 30 TAC §290.46(n)(2), by failing to maintain and make available an up-to-date map of the distribution system; and 30 TAC §290.42(l), by failing to provide an up-to-date and thorough plant operations manual for operator review and reference; PENALTY: $787; ENFORCEMENT COORDINATOR: Thomas Barnett, (713) 767-3500; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Texas Westmoreland Coal Co.; DOCKET NUMBER: 2007-0660-IWD-E; IDENTIFIER: RN101610749; LOCATION: Leon, Limestone, and Freestone Counties, Texas; TYPE OF FACILITY: lignite surface mine; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 02653, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 104A and Outfall 001A, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $10,625; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Trigeant, Ltd.; DOCKET NUMBER: 2007-0806-IWD-E; IDENTIFIER: RN100214188; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0002720000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $2,220; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-0604-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Number 50232, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c), Air Permit Number 2501A, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $46,150; Supplemental Environmental Project (SEP) offset amount of $23,075 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Bill Mayhew dba Wood Trail Water Supply; DOCKET NUMBER: 2007-0881-PWS-E; IDENTIFIER: RN101244523; LOCATION: Kerr County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay all annual and late public health service fees; PENALTY: $312; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Mohammad Amin dba ZP Mart; DOCKET NUMBER: 2007-0333-PWS-E; IDENTIFIER: RN102038924; LOCATION: Cleveland, Montgomery County, Texas; TYPE OF FACILITY: convenience store with public water supply; RULE VIOLATED: 30 TAC §290.110(c)(5)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system; 30 TAC §290.41(c)(3)(O), by failing to protect completed well units with intruder-resistant fences; 30 TAC §290.39(e)(1), by failing to submit water system plans and specifications prepared by a licensed, professional engineer; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data; and 30 TAC §290.121(a), by failing to develop an up-to-date chemical and microbiological monitoring plan; PENALTY: $825; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200703413
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 7, 2007

♦ ♦ ♦

Notice of a Proposed Amendment of a General Permit Authorizing the Discharge of Wastewater Generated by Manure Compost Operations

The Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew a general permit (TCEQ Permit No. WQG200000) authorizing the disposal of wastewater generated by manure compost operations adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by §26.040 of the Texas Water Code.

PROPOSED GENERAL PERMIT. The Executive Director has prepared a draft amendment with renewal of an existing general permit that authorizes the disposal of wastewater generated by manure compost operations. The permit amendment is to revise buffer zone requirements for retention ponds. The Executive Director proposes to

require regulated facilities to submit a Notice of Intent (NOI) to obtain authorization for disposal.

The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/WQ_general_permits.html.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date this notice is published in the *Texas Register*.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting when the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commission's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at: www.tceq.state.tx.us.

Further information may also be obtained by calling the TCEQ's Water Quality Division, Industrial Permits Team, at (512) 239-4671.

Si desea información en Español, puede llamar 1-800-687-4040.

TRD-200703415
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 7, 2007

Notice of Comment Period and Hearing on Rescinding Bulk Fuel Terminal and Site-Wide General Operating Permits

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on rescission of the Bulk Fuel Terminal General Operating Permit (GOP) Number 515 and Site-Wide GOP Number 516. In accordance with Title 30 Texas Administrative Code Chapter 122, Subchapter F, General Operating Permits, if a GOP is rescinded and not replaced, authorizations to operate under the GOP are revoked and any permit holder authorized under the GOP must apply for another operating permit no later than the date the GOP is rescinded. However, GOP Numbers 515 and 516 were last revised in February 2004 with revisions to qualification criteria requiring all permit holders authorized to operate under GOP Number 515 or GOP Number 516 to submit a site operating permit (SOP) application by September 1, 2004. The executive director has determined that affected permit holders previously operating under GOP Number 516 have submitted the required application and the resulting SOPs have been issued. Hence, all authorizations to operate under GOP Number 516 have been voided. In addition, GOPs are required to be renewed at least every five years. GOP Number 515 expired in October 2006 and was not renewed. Hence, no permit holders should currently be authorized to operate under GOP Numbers 515 or 516. The executive director is, therefore, proposing to rescind GOP Numbers 515 and 516.

The GOP rescissions are subject to a 30-day comment period. During the comment period, any person may submit written comments on the GOP rescissions. A hearing will be held in Austin on September 18, 2007, at 2:00 p.m. in Room 131E of TCEQ, Building C, located at 12100 Park 35 Circle, Austin, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff member will be available to discuss the GOP rescissions 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Information relating to the GOP rescissions may be obtained from the TCEQ Web site at *http://www.tceq.state.tx.us/permitting/air/nav/air_genoppermits.html* or by contacting the TCEQ Office of Permitting, Remediation, and Registration, Air Permits Division at (512) 239-1250. Si desea información en Español, puede llamar al (800) 687-4040.

Written comments may be mailed to Ms. Tara Capobianco, Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, MC-163, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-1070. All comments should reference the GOP rescissions. Comments must be received by 5:00 p.m., September 24, 2007. For further information, contact Ms. Capobianco at (512) 239-1117.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Ms. Capobianco at (512) 239-1117. Requests should be made as far in advance as possible.

TRD-200703434

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 7, 2007

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued on August 2, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 12070-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 63,000 gallons per day. The facility is located on school property at 14910 Aldine Westfield Road in the City of Houston in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 412 has applied for a renewal of TPDES Permit No. WQ0014527001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 640,000 gallons per day. The facility is located approximately 1.8 miles southeast of the intersection of Will Clayton Parkway and Timber Forest Drive in Harris County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703447
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 8, 2007

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on September 4, 2007, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for the 2007 annual procedure codes relating to physician-administered drugs and biologicals and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) listed below. These changes are part of the annual review of the procedure codes under the Healthcare Common Procedure Coding System (HCPCS). The public hearing will be held in the Big Bend Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code, §32.0282, and Texas Administrative Code (TAC), Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates for the physician-administered drugs and biologicals and DMEPOS procedure codes are included in the table that follows this notice. The proposed payment rates will be retroactively effective to January 1, 2007. All claims submitted on or after January 1, 2007, will be reprocessed.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8021(c), which addresses reimbursement for durable medical equipment (DME) and expendable medical supplies; 1 TAC §355.8085, which addresses the Reimbursement Rates for Physicians and Certain Other Practitioners; 1 TAC §355.8441 (9) - (10), which addresses reimbursement to Texas Health Steps (THSteps) providers for immunizations and vaccines; and the specific fee guidelines published in Section 2.2.1.2 of the 2007 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 17, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

***Required Notice:** *The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC, and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse, or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors, and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.*

Procedure Codes and Proposed Payment Rates

*Type of Service Code (TOS)	Procedure Code	Current Medicaid Fee	Proposed Medicaid Fee
1	J0348	$0.00	$1.91
1	J0364	$0.00	$2.99
1	J0594	$0.00	$8.89
1	J0894	$0.00	$26.48
1	J1324	$0.00	$21.00
1	J2248	$0.00	$1.71
1	J2315	$0.00	$1.90
1	J3243	$0.00	$0.91
1	J3473	$0.00	$0.40
1	J9261	$0.00	$83.33
1	J7345	$0.00	$36.10
1	J7346	$0.00	$735.38
1	J1562	$0.00	$10.20
1	J1740	$0.00	$138.71
1	S0180	$0.00	$585.11
9	A4461	$0.00	$3.29
9	A4600	$0.00	$112.32
9	A4601	$0.00	$2.34
9	A8000	$0.00	$153.35
9	A8001	$0.00	$153.35
9	A8002	$0.00	$385.41
9	A8003	$0.00	$385.41
9	A8004	$0.00	$125.84
J	E0676	$0.00	$384.20
L	E0676	$0.00	$38.42
L	E0936	$0.00	$27.50
J	E2373	$0.00	$1,209.93
J	E2374	$0.00	$169.36
J	E2375	$0.00	$856.56
J	E2376	$0.00	$1,342.24
J	E2377	$0.00	$485.71
J	E2381	$0.00	$76.18
J	E2382	$0.00	$20.77
J	E2383	$0.00	$151.88
J	E2384	$0.00	$80.91
J	E2385	$0.00	$49.50
J	E2386	$0.00	$150.51
J	E2387	$0.00	$64.93

J	E2388	$0.00	$50.39
J	E2389	$0.00	$27.36
J	E2390	$0.00	$42.79
J	E2391	$0.00	$20.50
J	E2392	$0.00	$53.88
J	E2393	$0.00	$5.61
J	E2394	$0.00	$76.75
J	E2395	$0.00	$54.55
9	L1001	$0.00	$800.00
9	L3806	$0.00	$348.98
9	L3808	$0.00	$216.81
9	L3915	$0.00	$408.38
9	L5993	$0.00	$2,500.00
9	L5994	$0.00	$3,138.98
9	L6611	$0.00	$384.24
9	L6624	$0.00	$3,185.32
9	L6639	$0.00	$1,289.97
9	L6703	$0.00	$276.63
9	L6704	$0.00	$648.73
9	L6706	$0.00	$336.56
9	L6707	$0.00	$1,197.57
9	L6708	$0.00	$804.87
9	L6709	$0.00	$1,180.90
9	L7007	$0.00	$3,837.72
9	T4543	$0.00	$0.58

*Type of Service (TOS) Code Key:
1 = Medical Services
J = New Durable Medical Equipment (DME)
L = Leased DME
9 = Other DME

TRD-200703411
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 7, 2007

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates for a Sign Language Interpreter Procedure Code

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on September 4, 2007, at 3:00 p.m. to receive public comment on the proposed Medicaid payment rates for a sign language interpreter procedure code resulting from House Bill 3235, 79th Legislature, Regular Session, 2005, relating to providing interpreter services to certain recipients of medical assistance or their parents or guardians. The public hearing will be held in the Big Bend Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates will be retroactively effective September 1, 2007. The proposed rates are as follows:

*Type of Service Code (TOS)	Procedure Code	Modifier	Current Medicaid Rate	Proposed Medicaid Rate
1	T1013	U1	$0.00	$70.00
1	T1013	UA	$0.00	$8.75

*Type of Service Code Key: 1 = medical services

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, and the specific fee guidelines published in Section 2.2.1.2 of the 2007 Texas Medicaid Provider Procedures Manual. Rule 355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 17, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

***Required Notice:** The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.*

TRD-200703457
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 8, 2007

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendment 19 to the Texas State Plan for the State Children's Health Insurance Program (SCHIP) under Title XXI of the Social Security Act. The proposed effective date of this amendment is September 1, 2007.

This amendment implements the changes made to Texas CHIP dental benefits due to provider rate increases. This amendment increases the amount of preventive and therapeutic dental benefits enrollees receive. Currently, all enrollees receive up to $175 in preventive services during their coverage period. The CHIP dental benefits consist of three tiers, with the following limits within a 12-month period as follows: (1) enrollees in Tier I receive up to $200 in therapeutic services; (2) enrollees in Tier II receive up to $300 in therapeutic services; and (3) enrollees in Tier III receive up to $400 in therapeutic services. All enrollees will receive up to $250 in preventive services during their 12-month coverage period. The amount of therapeutic services for enrollees will change as follows: (1) enrollees in Tier I will receive up to $280; (2) enrollees in Tier II will receive up to $425; and (3) enrollees in Tier III will receive up to $565 during their 12-month coverage period.

HHSC anticipates that the proposed amendment to the state plan will result in annual aggregate spending of approximately $22,704,673 for federal fiscal year (FFY) 2008, with approximately $16,435,913 in federal funds and approximately $6,268,760 in state general revenue, and annual aggregate spending of approximately $26,458,149 for FFY 2009, with approximately $19,126,596 in federal funds and approximately $7,331,553 in state general revenue.

For additional information, please contact Kendra Sippel in the Acute Care Policy Development unit for the Medicaid and CHIP Division by telephone at (512) 491-5594 or by e-mail at kendra.sippel@hhsc.state.tx.us.

TRD-200703383
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 3, 2007

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 765, Transmittal Number TX 07-0066, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The amendment eliminates the 2.5 percent payment reduction for Medicaid services delivered by physicians and certain other practitioners that was implemented effective September 1, 2003. The 2.5 percent payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. A 2.5 percent payment reduction factor was applied to Medicaid rates for Medicaid

professional services at the end of the claims payment process, as the last step before calculating the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The amendment also eliminates high-volume provider payments for physicians and certain other practitioners effective September 1, 2007. High-volume payments for physicians and certain other practitioners were effective January 18, 2002, as a result of increased appropriations from the 2002-03 General Appropriations Act (Article II, Special Provisions, Section 29, S.B. 1, 77th Legislature, Regular Session, 2001). The elimination of the high-volume provider payments is the result of the 80th Legislature not continuing the funding for these payments; rather, those general revenue funds were redistributed for other provider rate increases. There is no fiscal impact associated with ending these high-volume provider payments, as the funding will be used for increased rates for services provided.

The amendment also provides general guidelines used when updating Medicaid fees for services provided by physicians and certain other practitioners, including, but not limited to: (1) updating the Medicaid relative value units (RVUs) to those currently in effect for Medicare and multiplying the updated RVUs by the current Medicaid conversion factor to result in an updated resource-based fee (RBF); (2) increasing the Medicaid conversion factor to increase RBFs for which no RVU update is required in order to increase access to services; (3) changing an existing RBF to an access-based fee (ABF) when the RBF methodology does not provide sufficient access to care; and (4) changing an existing ABF to an RBF as appropriate .

The proposed amendment is estimated to result in additional annual aggregate expenditures of $68,573,863 for the remainder of federal fiscal year (FFY) 2007, with approximately $41,679,194 in federal funds and approximately $26,894,669 in state general revenue. For FFY 2008, the estimated additional aggregate expenditures will be $818,296,222, with approximately $495,560,192 in federal funds and approximately $322,736,030 in state general revenue. For FFY 2009, the estimated additional aggregate expenditures will be $877,372,335, with approximately $530,108,365 in federal funds and approximately $347,263,970 in state general revenue.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Eileen Kreh, Rate Analyst, by mail at the Rate Analysis Department, by mail at the Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1347; by facsimile at (512) 491-1998; or by e-mail at Eileen.Kreh@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703410
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 6, 2007

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 769, Transmittal Number TX 07-010, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The amendment eliminates the 2.5 percent Medicaid payment reduction for Medicaid services delivered by clinical diagnostic laboratory providers that was implemented effective September 1, 2003. The 2.5 percent payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. A 2.5 percent payment reduction factor was applied to Medicaid rates for Medicaid professional and outpatient facility services at the end of the claims payment process, as the last step before calculation of the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The proposed amendment is estimated to result in additional annual aggregate spending of $294,480 for the remainder of federal fiscal year (FFY) 2007 of which $178,985 is federal expenditures and $115,495 is state general revenue expenditures. For FFY 2008, the estimated additional annual aggregate spending is $3,533,761, of which $2,140,046 is federal expenditures and $1,393,715 is state general revenue expenditures. For FFY 2009, the estimated additional annual aggregate spending is $3,802,327, with $2,297,366 in federal expenditures, and $1,504,961 in state general revenue expenditures.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Gary Crane, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1361; by facsimile at (512) 491-1998; or by e-mail at Gary.Crane@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703373
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2007

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment Number 773, Transmittal Number 07-014, to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment will be effective September 1, 2007.

The proposed amendment will revise the reimbursement methodology and adjust payment rates for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). These changes are a result of the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, House Bill 1, 80th Legislature, Regular Session, 2007), which appropriated general revenue funds for provider rate increases for the ICF/MR Program. The proposed amendment will delete the reimbursement methodology used prior to the effective date of this amendment and will have the end result of updating the reimbursement methodology to be used effective September 1, 2007.

The current plan language states that, for rates effective June 1, 2007 through August 31, 2009, the total recommended payment rate will be equal to the rates in effect on May 31, 2007 plus 4.77 percent. As a result of deleting this language, non-state operated ICF/MR rates effective September 1, 2007, will be calculated as per the ICF/MR reimbursement methodology described in Attachment 4.19-D, ICF/MR, (X)(B) of the state plan, and rates effective September 1, 2007 will be

7.37 percent above May 31, 2007 rates rather than the 4.77 percent detailed in the current language. As a result of the proposed amendment, payment rates for non-state operated ICF/MRs will increase by an average of 2.6 percent over current payment rates.

The proposed amendment is expected to result in additional annual aggregate expenditures of $813,416 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007 through September 30, 2007), with approximately $494,394 in federal funds and approximately $319,022 in state general revenue. For FFY 2008, the proposed amendment is estimated to result in additional annual aggregate expenditures of $9,760,972, with approximately $5,911,245 in federal funds and approximately $3,849,727 in state general revenue. For FFY 2009, the proposed amendment is estimated to result in additional annual aggregate expenditures of $9,760,972 with approximately $5,897,579 in federal funds and approximately $3,863,393 in state general revenue.

To obtain additional information or copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703439
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 8, 2007

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 776, Transmittal Number TX 07-017, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The proposed amendment corrects the current Texas Medicaid State Plan for Early Childhood Intervention (ECI) Developmental Rehabilitation Services (DRS) by removing language citing a 2.5 percent Medicaid payment reduction in the rates for these services. The 2.5 percent Medicaid payment reduction was implemented September 1, 2003, as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of House Bill 2292, 78th Texas Legislature, Regular Session, 2003. The 2.5 percent Medicaid payment reduction was not applicable to ECI DRS; however, the language was inadvertently added to the Texas Medicaid State Plan.

The proposed amendment will have no fiscal impact to the state or the federal budgets since the payment reduction was never implemented.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Barbara Davenport, Policy Analyst, by mail at Policy Development Support, Medicaid and CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703372
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 2, 2007

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 785, Transmittal Number TX 07-026, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The amendment eliminates the 2.5 percent Medicaid payment reduction factor for Medicaid services delivered by Physician Assistants (PAs) Nurse Practitioners (NPs), Clinical Nurse Specialists (CNSs), and Certified Nurse Midwives (CNMs) that was implemented effective September 1, 2003. The 2.5 percent payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. A 2.5 percent payment reduction factor was applied to Medicaid rates for Medicaid professional and outpatient facility services at the end of the claims payment process, as the last step before calculation of the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The amendment also eliminates high-volume provider payments for NPs, CNSs and CNMs effective September 1, 2007. High-volume payments for NPs, CNSs and CNMs were implemented effective January 18, 2002, as a result of increased appropriations from the 2002-03 General Appropriations Act (Article II, Special Provisions, Section 29, S.B. 1, 77th Legislature, Regular Session, 2001). The elimination of the high-volume provider payments is the result of the 80th Legislature not continuing the funding for these payments; rather, those general revenue funds were redistributed for other provider rate increases. There is no fiscal impact associated with ending these high-volume provider payments, as the funding will be used for increased rates for services provided.

The proposed amendment is estimated to result in additional annual aggregate spending for federal fiscal year (FFY) 2007 of $11,809, of which $7,178 is federal expenditures and $4,631 is state general revenue expenditures. For FFY 2008, the estimated additional annual aggregate expenditures are $150,210, with $90,967 in federal expenditures and $59,243 in state general revenue expenditures. For FFY 2009, the additional annual aggregate expenditures are $161,627, with $97,655 in federal expenditures, and $63,972 in state general revenue expenditures.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Gary Crane, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1361; by facsimile at (512) 491-1998; or by e-mail at Gary.Crane@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703388

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 6, 2007

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-035, Amendment Number 794, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The proposed amendment will adjust payment rates for the Day Activity and Health Services program to reflect the 2008-09 General Appropriations Act (Article IX, Additional Contingency and Other Provisions, Section 19.82, House Bill 1, 80th Legislature, Regular Session, 2007), which appropriated general revenue funds for state fiscal year (SFY) 2008 for provider rate increases for the Day Activity and Health Services Program. As a result of this amendment, payment rates for the Day Activity and Health Services program will increase by an average of 3 percent over payment rates in effect July 31, 2007.

The proposed amendment is estimated to result in additional annual aggregate expenditures of $272,545 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007, through September 30, 2007), with approximately $165,653 in additional costs in federal funds and approximately $106,892 of additional costs in state general revenue. For FFY 2008, the proposed amendment is estimated to result in additional annual aggregate expenditures of $2,490,741, with approximately $1,508,393 of additional costs in federal funds and approximately $982,348 of additional costs in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703402
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 6, 2007

♦ ♦ ♦

Department of State Health Services

Correction of Error

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopted an amendment to 25 TAC §2.1, concerning the Preparedness Coordinating Council. The notice in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4765) contained an error.

The fifth paragraph under the heading "COMMENTS" stated that no comments were received during the comment period for the rule amendment; however, the preamble should have included the following text:

"One comment was received by Advocacy Incorporated, the Protection and Advocacy System designated for the State of Texas to protect, promote and advance the rights of individuals with disabilities. They commented that they should be represented on the Preparedness Coordinating Council (PCC), as a way to represent individuals with disabilities in planning for emergencies.

"After careful consideration, the department disagrees with the commenter. The rule, as proposed, was revised to enlarge the PCC and to allow maximum flexibility in the appointment of members. Special categories of membership were eliminated as part of this revision. This flexibility is necessary because federal guidelines on how such councils and committees are composed have changed over time, and the department wants to retain the ability to obtain appropriate membership without changing the rule.

"Advocacy Incorporated's suggestion of their inclusion is valid and will be taken into consideration when nominations and selections for the committee are made in the future."

TRD-200703437

♦ ♦ ♦

Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services issued Agreed Orders to the following registrants:

Ben Taub General Hospital (License #L01303) of Houston. A total penalty of $18,000 shall be paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

METCO (License #L03018) of Houston. A total penalty of $2,750 shall be paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Wilson Inspection X-Ray Services (License #L04469) of Corpus Christi. A total penalty of $2,500 shall be paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Reinhart & Associates, Inc. (License #L03189) of Austin. A total penalty of $2,000 shall be probated for six months for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Spikes Imaging, Inc. (Registration #R27884) of Lubbock. A total penalty of $2,000 shall be paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Berry GP, Inc. (License #L01575) of Corpus Christi. A total penalty of $1,500 shall be paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Odessa Regional Hospital, LP (Registration #R04295) of Odessa. A total penalty of $4,000 was paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Paris Regional Medical Center (Mammography #M00503) of Paris. A total penalty of $8,000 shall be paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Randolph Family Dental (Registration #R24788) of Universal City. A total penalty of $500 shall be paid by registrant for violations of Title 25, Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, press "1", then press "0", Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200703382
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Filed: August 3, 2007

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Residences at Onion Creek) Series 2007

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Akins High School Cafeteria, 10701 South 1st Street, Austin, Travis County, Texas 78748, at 6:00 p.m. on September 4, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Onion Creek Housing Partners, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 224-unit multifamily residential rental development to be located approximately 2,500 feet east of the intersection of Interstate Highway 35 and East Slaughter Lane, on the north side of East Slaughter Lane, Travis County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200703431
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 7, 2007

♦ ♦ ♦

Public Hearings Schedule Announcement

The Texas Department of Housing and Community Affairs (TDHCA) announces the public hearing schedule for the *2008 State of Texas Consolidated Plan One Year Action Plan (OYAP); HOME, HTC and HTF Affordable Housing Needs Score; HOME, HTC and HTF Regional Allocation Formula; Housing Tax Credit (HTC) Qualified Allocation Plan and Rules (QAP); TDHCA Housing Trust Fund (HTF) Rule; Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules; Multifamily Bond Program Rules; Compliance Monitoring, Fair Housing, and Administrative Penalties Rules; Texas First Time Homebuyer Program; TDHCA HOME Program Rule; and Providing Current Contact Information to the Department Rule.* These hearings were consolidated to provide the public with an opportunity to more effectively provide comment on the Department's policy and planning documents and a variety of its programs. Copies of all relevant documents may be found on the TDHCA website (www.tdhca.state.tx.us) beginning September 10th, 2007. Hearings will be held at the following times and locations:

September 24th, 6:00 p.m. (Monday)

EL PASO

El Paso City Council Chambers

2 Civic Center Plaza, 2nd Floor

El Paso, TX 79901

September 26th, 6:00 p.m. (Wednesday)

HOUSTON

Houston City Hall Annex

901 Bagby St.

Houston, TX 77002

September 28th, 11:00 a.m. (Friday)

LUBBOCK

South Plains Association of Governments

1323 58th Street

Lubbock, TX 79412

October 1st, 11:30 a.m. (Monday)

DALLAS

Dallas Public Library Main, West Room

1515 Young Street

Dallas, TX 75201

October 3rd, 11:00 a.m. (Wednesday)

BROWNSVILLE

Brownsville City Council Chambers

1001 E. Elizabeth Street, 2nd Floor

Brownsville, TX 78521

October 4th, 6:00 p.m. (Thursday)

AUSTIN

Joe C. Thompson Conference Center

2nd Floor, Room 2.110

2405 Dedman Drive

Austin, TX 78713

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

Written comment should be addressed to the Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, TX 78711-3941, or by email at 2008rulecomments@tdhca.state.tx.us. For more information on these hearings, please contact TDHCA at (512) 475-3976.

TRD-200703458
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 8, 2007

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by NATIONAL GUARANTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Gilbert, Arizona.

Application for admission to the State of Texas by SAFE HARBOR INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Tallahassee, Florida.

Application to change the name of REVIOS REINSURANCE U.S. INC. to SCOR GLOBAL LIFE RE INSURANCE COMPANY OF TEXAS, a foreign life, accident and/or health company. The home office is in Los Angeles, California.

Application for admission to the State of Texas by HERITAGE UNION LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200703449
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 8, 2007

♦ ♦ ♦

Texas Department of Licensing and Regulation

Vacancies on Licensed Court Interpreter Advisory Board

The Texas Department of Licensing and Regulation announces three vacancies on the Licensed Court Interpreter Advisory Board established by Texas Government Code, Chapter 57. The purpose of the Licensed Court Interpreter Advisory Board is to advise the Texas Commission of Licensing and Regulation in adopting rules and designing a licensing examination.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of an active district, county, or statutory county court judge who has been a judge for at least the three years preceding the date of appointment; an active court administrator who has been a court administrator for at least the three years preceding the date of appointment; an active attorney who has been a practicing member of the state bar for at least the three years preceding the date of appointment; three active licensed court interpreters; and three public members who are residents of this state. Members serve staggered six-year terms with the terms of one third of the members expiring on February 1, of each odd numbered year. This announcement is for following positions: two active licensed court interpreters; and a public member who is a resident of this state.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department web site at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200703455
William H. Kuntz
Executive Director
Texas Department of Licensing and Regulation
Filed: August 8, 2007

♦ ♦ ♦

Vacancies on the Elevator Advisory Board

The Texas Department of Licensing and Regulation announces five vacancies on the Elevator Advisory Board established by Texas Health and Safety Code, Chapter 754. The pertinent rules may be found in 16 TAC §74.65. The purpose of the Elevator Advisory Board is to advise the Texas Commission of Licensing and Regulation on the adoption of appropriate standards for the installation, alteration, operation and inspection of equipment; the status of equipment used by the public in this state; sources of information relating to equipment safety; public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and any other matter considered relevant by the Commission.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of a representative of the insurance industry or a certified elevator inspector; a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a representative of owners or managers of a building having six stories or more and having equipment; a representative of independent equipment maintenance companies; a representative of equipment manufacturers; a licensed or registered engineer or architect; a public member; and a public member with a physical disability. Members serve at the will of the Commission. This announcement is for the following positions: a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a licensed or registered engineer or architect; a public member; and a public member with a physical disability.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us. Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-200703456

William H. Kuntz
Executive Director
Texas Department of Licensing and Regulation
Filed: August 8, 2007

♦ ♦ ♦

North Central Texas Council of Governments

Notice to Cancel Request for Proposals to Assist in the Monitoring and Development of the North Central Texas Regional Outer Loop/Rail Bypass Study

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments (NCTCOG) publishes this notice to cancel the Request for Proposals (RFP) to Assist in the Monitoring and Development of the North Central Texas Regional Outer Loop/Rail Bypass Study. The notice of the RFP for this study was originally published in the *Texas Register* on Friday, August 3, 2007, with responses to the RFP due on Friday, September 14, 2007. At this time, NCTCOG does not anticipate reissuing an RFP for this effort.

TRD-200703452
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 8, 2007

♦ ♦ ♦

Request for Proposals to Implement the Air Quality Public Awareness Campaign for Refueling Station Displays

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm (s) to implement the Air Quality Public Awareness Campaign for Refueling Stations Displays. The Air Quality Public Awareness Campaign promotes transportation-related clean air strategies and activities in the Dallas-Fort Worth (DFW) nine-county nonattainment area (including Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties). This Request for Proposals (RFP) is to manage the operations of and activities related to displays at refueling stations, including assistance with developing artwork and messages, selecting locations, placing the displays and routine inspection and upkeep of the displays. This campaign will be a combination of several air quality programs, such as the Air Quality Public Education and Information Program (including Air North Texas and Try Parking It.com), AirCheck Texas and the Regional Smoking Vehicle Program. The purpose of this public awareness campaign is to educate the public on how they can positively impact air quality through everyday actions. Engineering services are not required for this campaign.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, September 14, 2007, to Mindy Mize, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200703453
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 8, 2007

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on Michael Jon Whitley dba Whitley Dozer's application for a Texas Parks and Wildlife Department (TPWD) permit to dredge state-owned sand and gravel from Johnson Creek in Kerr County at locations between State Highway 41 and State Highway 39.

The hearing will be held at 11:00 a.m. on Friday, September 7, 2007 at TPWD Headquarters, 4200 Smith School Rd., Austin, TX 78744.

The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Submit written comments, questions, or requests to review the application to: Beth Hilliard, TPWD, by mail: 4200 Smith School Rd., Austin, TX 78744; fax (512) 389-4482; or e-mail, beth.hilliard@tpwd.state.tx.us.

TRD-200703428
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: August 7, 2007

♦ ♦ ♦

Texas State Board of Pharmacy

Request by Drug Manufacturer for Inclusion of a Drug on List of Narrow Therapeutic Index Drugs

On August 2, 2007, the Texas State Board of Pharmacy received a letter from Wyeth Pharmaceuticals requesting that all formulations of Rapamune7 Oral Solution and Rapamune7 Tablets be placed into consideration for inclusion on the list of narrow therapeutic index drugs.

This notice is posted in compliance with Senate Bill 625.

TRD-200703380
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: August 3, 2007

♦ ♦ ♦

Texas Public Finance Authority

Texas Public Finance Authority Charter School Finance Corporation Request for Applications Concerning Texas Credit Enhancement Program

Filing Date. August 8, 2007.

Filing Authority. Texas Public Finance Authority Charter School Finance Corporation.

Eligible Applicants. The Texas Public Finance Authority Charter School Finance Corporation (CSFC) is requesting applications from eligible entities to receive credit enhancement for eligible Texas open enrollment charter schools by funding a debt service reserve fund for bonds issued under Chapter 53 of the Texas Education Code. Eligible entities are open-enrollment charter schools that: (1) have earned an academic rating of acceptable or higher for two consecutive years, including 2007; (2) are fiscally sound as determined by a satisfactory rating under the 2007 Financial Integrity Rating System of Texas (FIRST) as adapted for charter schools; and (3) meet other criteria as outlined in the application.

Description. The Texas Credit Enhancement Program (TCEP) received a $10 million grant from the U.S. Department of Education (USDOE) to establish a credit enhancement program for charter schools facilities funding. Approximately $1,300,000 of the grant has not yet been awarded. TCEP is a consortium formed with the Resource Center for Charter Schools, the Texas Public Finance Authority Charter School Finance Corporation (TPFA CSFC), and the Texas Education Agency (TEA). The TPFA CSFC is a non-profit corporation created by the Board of Directors of the Texas Public Finance Authority (TPFA), a state agency, pursuant to §53.351 of the Texas Education Code. TPFA provides administrative and staff support for the CSFC. The CSFC is the entity responsible for awarding access to TCEP grant funds.

Dates of Project. Applications will be due by October 15, 2007, at 5:00 p.m. into the TPFA office at 300 West 15th Street, Suite 411, Austin, Texas 78701.

Prior to submitting the application, the charter schools should work with their financial advisors, bond counsel, and an underwriter to structure their bond issue and prepare preliminary bond documents. These services will not be provided by TCEP.

Project Amount. The TCEP has awarded approximately $8,700,000 of the $10 million grant; and approximately $1,300,000 in grant funds remain to be awarded. The grant funds are to be used to establish reserve funds for charter schools that are issuing municipal bonds to finance the acquisition, construction, repair, or renovation of Texas charter school facilities. Refinancing of facilities debt may be included if it falls within federal program guidelines. The debt service reserve funds will be held in the State treasury solely to provide security for repayment of the bonds. The funds will not be provided directly to the approved charter schools for construction.

Selection Criteria. Applications will be reviewed by consortium staff and approved by the CSFC board. Approved charters will be notified in early 2008.

Requesting the Application. An electronic version of the application will be available on the TPFA website (http://www.tpfa.state.tx.us) approximately August 7, 2007.

Further Information. For additional information, contact: Kim Edwards at kim.edwards@tpfa.state.tx.us; Mary Perry at mary.perry@tea.state.tx.us; or Katie Howell at Katie.howell@charterstexas.org.

TRD-200703441
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: August 8, 2007

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 30, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of True Electric, LLC for Retail Electric Provider (REP) Certification, Docket Number 34574, before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 24, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34574.

TRD-200703407
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2007

♦ ♦ ♦

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 3, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of En-Touch Systems, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34598 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the geographic area of the Electric Reliability Council of Texas (ERCOT).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477, no later than August 24, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at

(512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34598.

TRD-200703414
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2007

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 2, 2007, Pac-West Telecomm, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60740. Applicant intends to reflect discontinuation of all services, but does not seek to relinquish its SPCOA at this time.

The Application: Application of Pac-West Telecomm, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34590.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 22, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34590.

TRD-200703408
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2007

♦ ♦ ♦

Notice of Commission Workshop on Energy Efficiency Rulemaking

The staff of the Public Utility Commission of Texas (commission) will hold a workshop, for stakeholders interested in an energy efficiency rulemaking, on Wednesday, August 29, 2007 at 9:30 a.m. to 4:00 p.m. in Hearing Room Gee, 7th floor, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The workshop will provide an opportunity for stakeholders to discuss the draft rule for implementation of HB 3693 (80th Legislative Session). The draft rule is available on the Public Utility Commission's Interchange under Project Number 33487.

Questions concerning this notice should be referred to Theresa Gross, Electric Division, (512) 936-7367. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All comments should reference Project Number 33487.

TRD-200703412
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2007

♦ ♦ ♦

Notice of Contract Amendment

As required by Texas Government Code, §2254.031 and §2254.028, the Public Utility Commission of Texas (PUCT) provides this notice of amendment of Contract Number 473-07-00311 between Boston Pacific Company, Inc. (Boston Pacific) and the PUCT.

On July 5, 2007, the PUCT and Boston Pacific entered into a contract for major consulting services associated with a review of the acquisition of TXU Corporation (TXU) by Texas Energy Future Holdings Limited Partnership (TEF). The contract for these services will end on August 31, 2007.

In the RFP, the PUCT advised offerors that the agency might later require the contractor to provide contested case services and described those services. The agency invited, but did not require, proposers to submit pricing for these services. The PUCT has determined that those services are necessary and is amending the contract by adding these services to the Statement of Work and extending the contract's term to the end of the contested case proceedings (currently estimated at December 15, 2007). Costs for these additional services are not to exceed $200,000.

For further information on Project Number 34288, contact:

Leticia E. Flores

Director of General Law

(512) 936-7146

leticia.flores@puc.state.tx.us

TRD-200703375
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 2, 2007

♦ ♦ ♦

Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of AT&T Texas's application filed with the Public Utility Commission of Texas (commission) on July 23, 2007, to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of AT&T Texas to Withdraw Bill Plus Service; Docket Number 34553.

The Application: AT&T Texas (AT&T Texas) filed an application to withdraw Bill Plus Service. AT&T proposes to discontinue AT&T Bill Plus CD analysis tool effective December 30, 2007. AT&T intends to offer two alternatives: the web based AT&T's Business Direct eBill and the AT&T Connections CD, which provide much of the functionality of the Bill Plus CD product.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by September 17, 2007, by mail at P.O. Box 13326, Austin, Texas 78711- 3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 34553.

TRD-200703451
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2007

♦ ♦ ♦

Notice of Proceeding for 2007 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2007 annual compliance affidavit proceeding initiated by the Public Utility Commission of Texas for eligible telecommunications providers (ETP) to attest to the proper use of Texas universal service funds.

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA §56.030. Project Number 32567.

The Public Utility Commission of Texas (commission) initiated this proceeding pursuant to Public Utility Regulatory Act (PURA) §56.030 and P.U.C. Substantive Rule §26.417. PURA §56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding the use of money from TUSF program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP receiving support from the TUSF. In accordance with PURA §56.030 and P.U.C. Substantive Rule §26.417, each ETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds.

Therefore, on or before September 1, 2007, carriers designated as ETPs should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. Persons contacting the commission regarding this certification proceeding should refer to Project Number 32567.

TRD-200703405
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2007

♦ ♦ ♦

Public Notice of Informational Workshop Regarding Scope of Competition in Telecommunications Markets of Texas - 2007 Interim Data Processing

The Public Utility Commission of Texas (commission) will hold a workshop regarding the data request for the Scope of Competition in Telecommunications Markets of Texas - 2007 Interim Data Processing on Friday, September 7, 2007, at 9:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. At this workshop, commission staff will discuss the filing requirements for all certificated telecommunication utilities (CTUs), review the various forms to be filed, answer questions regarding the proper completion of the data request forms, explain the filing of confidential documents pursuant to the P.U.C. Procedural Rules, and discuss other relevant matters. The workshop is expected to conclude at noon. Project Number 34434 has been assigned to this project.

This workshop is intended to be informational only. Commission staff will not discuss or entertain questions regarding any substantive changes or additions to the forms.

Questions concerning the workshop or this notice should be referred to Rick Talbot at (512) 936-7257 or Bryan Kelly at (512) 936-7216.

TRD-200703450
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2007

♦ ♦ ♦

Public Notice of Workshop on Rulemaking Proceeding to Amend P.U.C. Substantive Rules Relating to Selection of Transmission Service Providers Related to Competitive Renewable Energy Zones and Other Special Projects

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding a new rulemaking proceeding that will address the selection of Transmission Service Providers (TSPs) for Competitive Renewable Energy Zones (CREZs) and other special projects on Tuesday, August 28, 2007 at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 34560, *Rulemaking Proceeding to Amend P.U.C. Substantive Rules Relating to Selection of Transmission Service Providers Related to Competitive Renewable Energy Zones and other Special Projects*, has been established for this proceeding. No later than ten days prior to the workshop, a summary of the scope of the rulemaking and questions for discussion at the workshop will be filed in the Interchange and posted on the commission's website.

Questions concerning the workshop or this notice should be referred to Sean Farrell, Attorney, Legal Division at (512) 936-7290. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200703406
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2007

♦ ♦ ♦

Texas Residential Construction Commission

Notice for Comments

The Texas Residential Construction Commission's Advisory Committee on Warranties and Building and Performance Standards plans to meet on Wednesday, September 12, 2007 at 1:30 p.m. in the commission's hearing room at 311 E. 14th St., Suite 200, Austin, Texas. If you plan to attend and need, require auxiliary aids, services or materials in an alternate format, please contact the Texas Residential Construction Commission at least five (5) working days prior to the meeting date. Phone: (512) 463-1040, FAX: (512) 463-9507, E-MAIL: dora.rivera@trcc.state.tx.us. TDD Relay Texas: 1-800-relay-VV (for voice), 1-800-TX (for TDD).

Interested persons who have suggestions for amending the warranties and building and performance standards adopted by the commission pursuant to Title 16 of the Property Code must submit those suggestions in writing to the commission by the close of business Tuesday, September 4, 2007. The adopted warranties and building and performance standards can be located with the commission's adopted rules Chapter 304, which are on the commission's website at www.trcc.state.tx.us/Rules. The rules can also be located on the

Secretary of State's website www.sos.state.tx.us under Texas Administrative Code, Title 10, Chapter 304.

Mail comments to "Standards Advisory Committee c/o Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144" or send comments electronically to comments@trcc.state.tx.us. Comments sent electronically must have "Standards Advisory Committee" in the subject line or they may not be considered. Comments should be organized consistent with the organization of the rules. Comments not received by 5 p.m. on Tuesday, September 4, 2007, will not be considered at the September 12, 2007 meeting.

TRD-200703438
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: August 7, 2007

♦ ♦ ♦

Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University (SFA or University) is seeking a contractor to plan, design, and prepare complete digital files for use in fabrication of wayside exhibit panels for the Pineywoods Nature Center and the Trail Between the Lakes to include design, art, production of digital "camera-ready" files to meet fabrication specifications for outdoor quality, phenolic resin panels. Contractor will also be responsible for having the signs fabricated and shipped to the University; the University will install the signs. Concept planning will include working with SFA to develop the thematic message for each panel and developing a unifying visual theme that creates a cohesive system of wayside signage based on logo, theme, color, and style. Contractor shall provide an artist to develop drawings for some panels and may be responsible to take the photographs where appropriate for other panels. The University is initially considering approximately 20 panels.

SELECTION CRITERIA: Since the University has received some initial guidance from Interpretive Communications, it is the University's intent to award the contract to Interpretive Communications unless a better offer is received. Evaluation will be made by the Coordinator of the Arboretum Education Program and a Forestry Professor based on evidence of the applicant's knowledge and experience in performing the specified services and costs. Interested parties must submit proposal with the following information: experience, qualifications, and cost for services to be provided.

CONTRACT COST: The contract amount is not to exceed $50,000.

DEADLINES & CONTACT INFORMATION: Proposals must be received in the Office of the Director of Purchasing, P.O. Box 13030, 2124 Wilson Drive, Nacogdoches, TX 75962 by August 20, 2007. For further information, contact Elyce Rodewald, (936) 468-1832, erodewald@sfasu.edu.

TRD-200703433
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 7, 2007

♦ ♦ ♦

Texas A&M University System Board of Regents

Request for Proposal

RFP 07-0022 Heat and Power Generation Financial Analysis

Texas A&M University is accepting proposals and intends to enter into an Agreement with a Financial Consultant Firm to conduct a financial analysis in conjunction with an engineering analysis (by others) to compare the viability, cost, and risk associated with various options to generate and/or procure electrical power and thermal energy at Texas A&M University in College Station. The project deliverables shall include an audit report to be followed with presentations of the results. The report shall verify the accuracy of the data provided by the engineering firm and the assumptions made.

Information may be obtained by contacting: Jeff Zimmermann, A.P.P., Senior Buyer, Dept. of Strategic Sourcing & Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-3013 or e-mail at j-zimmermann@tamu.edu.

Selection criteria will include methodology, qualifications, references, and cost. Proposals must be received on or before 2:00 p.m. CDT on August 31, 2007.

TRD-200703369
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: August 1, 2007

♦ ♦ ♦

Texas Department of Transportation

Request for Proposal for Aviation Architectural/Engineering Services

The City of Grand Prairie, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional architectural/engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation architectural/engineering design services described below:

Current Project: TxDOT CSJ No. 08TBGNDPR. Scope: Provide architectural/engineering services to design new airport terminal building at Grand Prairie Municipal Airport.

The HUB goal is set at **5%**. TxDOT Project Manager is John Greer, P. E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and the criteria are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting Grand Prairie Municipal Airport. The proposal should address a technical approach for the current scope. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Professional Architectural/Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound

in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 7, 2007, 4:00 p.m. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The Consultant Selection Committee (committee) will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating architectural/engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified, and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact John Greer, at 1-800-68-PILOT at extension 4528.

TRD-200703432
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: August 7, 2007

♦ ♦ ♦

University of North Texas System

Notice of Intent to Amend Consulting Contract

The University of North Texas System ("UNT System") intends to amend a contract for consulting services related to federal government relations. The consulting services are being provided by Congressional Solutions, Inc. under a contract with a term beginning May 17, 2005, and ending August 31, 2008.

At this time it is necessary for UNT System to amend its contract with Congressional Solutions, Inc. Additional compensation up to the amount of $90,000.00 will be necessary to compensate consultant for work during the next 12 month period related to additional services that were not anticipated when the original contract was executed.

As required by Chapter 2254 of the Texas Government Code, prior to amending its contract with Congressional Solutions, Inc., UNT System is posting this Notice of Intent to Amend Consulting Contract, and hereby extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

Scope of Work:

The federal government relations consulting firm will provide services to UNT System in connection with research objectives and strategies in presenting opportunities to utilize the available resources of the University of North Texas - Center for Advanced Research and Technology.

How to Respond; Submittal Deadline:

To respond to this invitation, consultants must submit the information requested in the Specifications section of this invitation and any other relevant information in a clear and concise written format to: Carrie Stoeckert, Assistant Director for Bids and Contracts, University of North Texas System, P.O. Box 310499, Denton, TX 76203 (2310 North Interstate 35-E, Denton, TX 76201). Offers must be submitted in an envelope or other appropriate container and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 2:00 p.m., CST, September 17, 2007. Submissions received after the submittal deadline will not be considered.

Specifications:

Any consultant submitting an offer in response to this invitation must provide the following: (1) the consultant's legal name, type of entity (individual, partnership, corporation, etc.), and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the monthly fee to be charged for providing the services and any applicable hourly rate for any team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this invitation, any unique benefits the consultant offers UNT System, and any other information the consultant desires UNT System to consider in connection with the consultant's offer; (8) information to assist UNT System in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this invitation; (9) information to assist UNT System in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT System in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT System in assessing the overall cost to UNT System; and (12) information to assist UNT System in assessing the consultant's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein relate to consulting services currently provided to UNT System by Congressional Solutions, Inc. UNT System intends to amend its contract with Congressional Solutions, Inc. unless a better offer, as determined by UNT System in its sole discretion, is received in response to this invitation.

The successful offer must be submitted in response to this invitation no later than the submittal deadline and will be the offer that is the most advantageous to UNT System in UNT System's sole discretion. Offers will be evaluated by UNT System and member institution personnel. The evaluation of offers and the selection of the successful offer will be based on information provided to UNT System by the consultant in response to the Specifications section of this invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT System. The successful consultant will be required to enter into a contract acceptable to UNT System.

Finding by Chancellor:

The Chancellor of UNT System finds that the consulting services are necessary because UNT System does not have the specialized experi-

ence or the staff resources available to present opportunities to utilize the available resources of the University of North Texas - Center for Advanced Research and Technology. UNT System believes that such expert consulting services will be cost effective by increasing research opportunities and expanding federal investment in research, teaching, and related programs in Texas throughout UNT System's member institutions.

Questions:

Questions concerning this invitation should be directed to: Carrie Stoeckert, Assistant Director for Bids and Contracts, University of North Texas System, P.O. Box 310499, Denton, TX 76203 (2310 North Interstate 35-E, Denton, TX 76201). UNT System may in its sole discretion respond in writing to questions concerning this invitation. Only UNT System's responses made by formal written addenda to this invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200703440
Randall J. Saxon
Director of Purchasing and Payments Services
University of North Texas System
Filed: August 8, 2007

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).